

## ADMISSION OF IDAHO INTO THE UNION.

MARCH 26, 1890.—Ordered to be printed and recommitted to the Committee on Territories.

Mr. DORSEY, from the Committee on the Territories, submitted the following

### REPORT:

[To accompany bill H. R. 4562.]

The Committee on the Territories, to whom was referred the bill (H. R. 4562) to provide for the admission into the Union of the State of Idaho, and for other purposes, beg leave to report as follows:

Idaho was created a Territory by act of Congress March 3, 1863, from parts of Dakota, Nebraska, and Washington Territories. By the creation of Montana and Wyoming as Territories, Idaho was reduced to its present size of 86,294 square miles, extending from the British possessions on the north to Utah and Nevada on the south, from Montana and Wyoming on the east to Oregon and Washington on the west, having a length from north to south of 410 miles, and a width from east to west varying from about 50 miles on the line of the British possessions on the north to 306½ miles on its southern boundary line.

The Territory contains 55,228,160 acres, 16,000,000 of which are agricultural, 10,000,000 forests, 20,000,000 grazing and mineral, 8,000,000 rough and mountainous, unfit for cultivation and not known to contain minerals, 1,228,160 lakes and rivers.

Idaho is greater in area than New York, New Jersey, Massachusetts, and New Hampshire combined. It is on the west side of the Rocky Mountains, and the warm currents of the Pacific sweep over the Territory, tempering the atmosphere and having a most beneficial effect on its arable and grazing belts.

The average or mean annual temperature of the valleys is about 51 degrees.

Idaho is better supplied with water than any of the States or Territories west of the Missouri River. The Great Snake River, which in volume of water is about equal to the Ohio, traverses the Territory from east to west. Salmon River courses through the Territory for over 500 miles. Clark's Fork, Spokane, Boisé, Payette, Weiser, Big and Little Wood Rivers, Bruneau, Malad, Portneuf, Clear Water, Cœur d'Alene, St. Joseph, Bear River, Kootenai and Lemhi are large streams, into which hundreds of tributaries empty.

Of the 16,000,000 acres of agricultural land in the Territory, but a small proportion has been surveyed; about 4,500,000 acres have been entered or filed upon under the several land acts of Congress.

The deep soil in the valleys and on the plateaus in the eastern and southern counties is composed of decayed vegetable matter, mixed with sufficient mineral and decayed rock to give warmth and great productiveness. This division of the Territory contains over one-half of the arable lands in the Territory, the greater portion of which requires irrigation. In the northern counties a dark, deep loam of great

depth prevails. This section of Idaho does not require irrigation, and is in itself an empire. Alkali soil is limited to narrow strips in widely separated localities, and rarely interferes with agriculture.

The yield of all kinds of cereals and vegetables is most gratifying, wheat ranging from 30 to 50 bushels; potatoes from 250 to 500 bushels; oats from 50 to 75 bushels per acre, and other cereals and vegetables in the same ratio.

The agricultural report for the Territory for 1889 gives :

|                        |           |                                 |         |
|------------------------|-----------|---------------------------------|---------|
| Wheat..... bushels.    | 4,000,000 | Other vegetables ..... bushels. | 838,350 |
| Oats..... do...        | 2,014,800 | Apples..... do...               | 277,000 |
| Barley..... do...      | 1,150,400 | Pears..... boxes.               | 29,850  |
| Corn..... do...        | 47,400    | Peaches ..... do...             | 34,850  |
| Rye ..... do...        | 64,900    | Plums and prunes..... do...     | 34,350  |
| Flaxseed ..... do...   | 555,000   | Hay ..... tons.                 | 424,740 |
| Grass-seed ..... do... | 17,350    | Grapes ..... boxes.             | 18,200  |
| Potatoes ..... do...   | 1,085,900 | Berries ..... baskets.          | 76,600  |

The fruits and berries raised in the Territory are not excelled in any country. The sage-brush lands of Idaho are more easily turned into fruit farms and with as little expense as in any other State. For the past ten or twelve years from 25,000 to 40,000 fruit trees have been set out annually. Their growth is rapid, and trees bear abundantly when quite young, especially so in all valleys and plateaus not exceeding 3,500 feet above tide water. Trees mature and bear fruit at the altitude of 4,500 feet, but do not produce so abundantly as in the lower valleys.

Shorn of all other resources, the agricultural lands of Idaho alone are sufficient to support a large population and build up a great State.

Stock-raising is one of the great industries of the Territory. On the large area of grazing lands there are now 385,896 cattle of all grades; 123,840 horses, 2,480 mules, 447,924 sheep.

The 10,000,000 acres of forest land will be a source of large revenue to Idaho for hundreds of years, and will give employment to a large population.

#### MINES.

The mines of the Territory have produced to date \$157,720,962.84, the production of last year, 1889, being the largest in the history of the Territory, amounting to the princely sum of \$17,344,600, viz :

|             |             |
|-------------|-------------|
| Gold.....   | \$3,204,500 |
| Silver..... | 7,564,500   |
| Lead.....   | 6,490,000   |
| Copper..... | 85,600      |

Idaho is rapidly advancing to the front as a bullion-producing State, and with the present ratio of increase will soon be the greatest bullion-producing State in the Union. The Territory has now developed several of the largest mines on the globe, the production of which will be largely increased during the year 1890. Beside the bullion-producing mines, Idaho also has an abundance of iron, salt, sulphur, marble, sandstone, granite, limestone, and mica, with tin and cinnabar in limited quantities.

Coal is known to exist in nearly every county in the Territory, but is not sufficiently developed to determine its extent.

#### POPULATION.

[From governor's report for 1889.]

By comparison we can calculate the increase of population from the year 1880, when the census was last taken, which gave us 32,619 souls. Of the total population at that time, 6,698 were children of school age.



We may therefore estimate 4.87 inhabitants to every child of school age, as reported to this department, which gives us the following increase of population :

| Years.        | Children<br>of<br>school age. | Rates. | Total popu-<br>lation. |
|---------------|-------------------------------|--------|------------------------|
| 1880-'81..... | 6,698                         | 4.87   | 32,619                 |
| 1881-'82..... | 8,193                         | 4.87   | 39,999                 |
| 1882-'83..... | 9,650                         | 4.87   | 46,995                 |
| 1883-'84..... | 10,936                        | 4.87   | 53,258                 |
| 1884-'85..... | 13,140                        | 4.87   | 63,991                 |
| 1885-'86..... | 15,399                        | 4.87   | 74,993                 |
| 1886-'87..... | 17,372                        | 4.87   | 84,601                 |
| 1887-'88..... | 19,994                        | 4.87   | 97,370                 |
| 1888-'89..... | 24,071                        | 4.87   | 117,225                |

Upon this basis of calculation, which is undoubtedly more accurate than by comparison with the usual estimates by voting population or estimates given by counties, it will be seen that the present population is 117,225 souls.

Distribution by nationalities is a matter of too much conjecture without an actual census taking in the Territory.

#### PUBLIC SCHOOLS.

The total number of schools in the Territory was, on the 21st day of August last, 434; total number of children of school age reported, 24,071. A large number of families live many miles from organized school districts and their children are not included in the above enrollment. Total receipts for school purposes (independent of private schools), \$198,782; expenditures, \$175,579.92; balance remaining in school fund at close of school year, \$42,121.50.

The following gains appear in the report of the superintendent of public instruction for the Territory for the year 1889: Increase of children of school age, 4,077; schools, 69.

There is a compulsory school law in the Territory and the greatest interest is taken by the people in educational matters. Substantial and commodious school-houses adorn and add to the attractions of every town and settlement. Besides the public schools there are several independent school districts, and many religious denominations have schools of their own. The estimated cost of buildings used for school purposes for public schools in the Territory is \$344,500, an increase of \$65,000 during the past year.

There are 109 church edifices in the Territory, valued at \$220,500, with a membership of 11,137.

#### PUBLIC BUILDINGS.

The Territory has constructed and furnished, unaided by the General Government, a capitol building at a cost of over \$100,000.

The capitol is a most substantial building, the basement being solid masonry, while the main structure is of the best quality of brick and is heated by the latest improved heating apparatus. This fine structure contains spacious and elegantly furnished rooms on the first floor for governor, surveyor-general, Territorial secretary, controller, superintendent of public instruction, and United States attorney, library, and armory. On the second floor are the council chamber, representatives hall, the supreme court room, the judges' chambers, and various committee rooms. The third floor is connected with the galleries, and also has book and committee rooms.

The Territory has in course of construction at Moscow, in Latah County, a State university. This fine structure when completed will cost \$75,000. The Territory appropriated from the general fund \$15,000 for the building, and an annual Territorial tax of one-half mill is levied and collected, the proceeds going into the university fund.

The Territory constructed at Blackfoot, Bingham County, a fine three-story brick building for an insane asylum, with a two-story wing and other annexes. The building, furniture, and grounds cost the Territory about \$55,000. In December last the main structure was destroyed by fire, but the sixty-five patients are comfortably quartered in the wing and annexes.

The United States assay office, located in the heart of Boise City, is the property of the United States, and cost the Government \$81,000.

The United States penitentiary, located 2 miles from Boise City, is built of sandstone. It has forty-two cells. An appropriation has been made and the contract let for a wing duplicating the one now in use. There are now incarcerated in the prison sixty-six Territorial and three United States prisoners.

The governor of the Territory, in his report for 1889, places the number of miles of railroads in the Territory at 888.73 miles; the products exported to outside markets by railroads and steam-boats at 184,015 tons, and the imports at 119,000 tons.

There are 917 miles of telegraph lines, and forty-one newspapers are published within the Territory.

#### FINANCE.

The comptroller of the Territory, in his annual report to the governor, December, 1889, states that on the 20th day of January, 1890, the registered or floating debt would be paid in full, leaving the bonded indebtedness alone unpaid. The total bonded indebtedness of the Territory is \$146,715.06. Under the act of 1877 there was issued for general purposes of indebtedness \$46,715.06. The denomination of these bonds are \$1,000, and rate of interest 10 per cent. per annum.

The interest is payable semi-annually, in June and in December, at the office of the Territorial treasurer. They mature December 1, 1891. There will be ample funds in the Territorial treasury to redeem these bonds at maturity and without additional taxation.

Under the act approved February 2, 1885, \$100,000 additional bonds were issued for the following purposes: Eighty thousand dollars for capitol building and \$20,000 to aid in construction of insane asylum. These bonds were issued in denominations of \$1,000 each, bearing 6 per cent. per annum coupons, payable semi-annually in July and January. The capitol building bonds mature in 1905 and the asylum bonds fall due in 1892, 1893, 1894, and 1895, in multiples of \$5,000 annually. The capitol building fund is maintained by one-tenth of the receipts arising from the Territorial and county licenses and the proceeds of all rents derived from use of the capitol building.

These bonds are redeemable at the pleasure of the Territory at any time after the expiration of ten years from the date of issue. All these bonds will be extinguished in ten years from date of issue from the sinking fund, as the receipts are increasing annually. There is in this fund at the present time over \$20,000.

The rate of Territorial tax is a fixed sum of 4 mills on the dollar; 3½ mills for general, and one-half mill for university funds.



The assessed valuation of property in the Territory for the last fiscal year (1889) is in round numbers \$24,000,000.

Mines and lands not patented are not assessed. Fully one-half of the improved farms in the Territory are not patented; these lands are worth from \$10 to \$40 per acre. The present cash value of property in Idaho will equal \$100,000,000 at conservative estimate.

#### CONSTITUTION FOR THE STATE OF IDAHO.

In pursuance of a proclamation issued by Governor E. A. Stevenson, on the 2d day of April, 1889, recommending the election by the people of the Territory of Idaho of seventy-two delegates to assemble at Boise City, the capital of the Territory, on the 4th day of July, 1889, for the purpose of framing a constitution for the State of Idaho, and a proclamation of his successor, Governor George L. Shoup, issued on the 11th day of May, 1889, a majority of the delegates elected to said constitutional convention of Idaho assembled at Boise City, the capital of the Territory, on Thursday the 4th day of July, 1889. The convention was called to order on that day by his excellency George L. Shoup, governor of Idaho, and a temporary organization was effected by the election of John T. Morgan, of Bingham County, temporary president, and James W. Reed, of Nez Percés County, temporary secretary. Seventy delegates presented their credentials and were found entitled to seats in the convention. Sixty-nine delegates took the oath and participated in the proceedings. A permanent organization was effected by the election of William H. Claggett, of Shoshone County, as president; James W. Reed, of Nez Percés County, as vice-president and Charles H. Reed, of Ada County, secretary. The oath, as prescribed by the rules of the convention, was administered to the members and officers of the convention by his honor Hugh W. Weir, chief-justice of Idaho.

In the convention every county of the Territory was represented, and at no time during the session was there less than a majority of the delegates in attendance.

The deliberations of the convention were characterized by harmony and a single purpose—a good constitution and statehood for Idaho.

The session of the convention lasted thirty-four days, and after adopting a constitution for the State of Idaho, adjourned *sine die* on the 6th day of August, 1889. The constitution, as adopted by the convention, was signed by all the delegates present at the adjournment with the exception of one member. In compliance with the direction of the convention, the constitution, as adopted by the convention and signed by the delegates, and all the records thereof, were deposited with the secretary of Idaho. On the 2d day of October, in pursuance of section 6, schedule and ordinance of said constitution, George L. Shoup, governor of Idaho, issued a proclamation submitting the constitution of the State of Idaho to the people of the Territory for its adoption or rejection at an election to be held on Tuesday the 5th day of November, 1889, said election to be conducted in all respects as provided by law for general elections, and abstracts of such returns duly certified to be transmitted to the board of canvassers as now provided by law for canvassing the return of votes for Delegates to Congress.

As provided in section 6, article 21, of schedule and ordinance of the constitution of the State of Idaho, a meeting of the board of canvassers therein provided for was held in the executive office, December 2, 1889; present, Edward J. Curtis, secretary of the Territory, and Joseph P. Wilson, United States marshal of the Territory. In the

presence of his excellency George L. Shoup, governor of the Territory, said board of canvassers proceeded to a canvass of the votes cast for the adoption or rejection of the constitution at an election held November 5, 1889, as returned by the canvassing boards of the several counties.

Returns from all the counties were found to have been received by the Territorial secretary; which were opened, examined, and canvassed, with the following results:

|                                |        |
|--------------------------------|--------|
| For the constitution .....     | 12,398 |
| Against the constitution ..... | 1,773  |
| Scattering .....               | 13     |
| Total .....                    | 14,184 |

We, the undersigned board of canvassers, authorized by the constitution of the State of Idaho to canvass the vote cast for the adoption or rejection of said constitution, do hereby certify that at an election held on the 5th day of November, 1889, in the several counties of the Territory, as returned by the canvassing boards and received by the Territorial secretary and canvassed by us in the presence of his excellency George L. Shoup, governor of the Territory of Idaho, on the 2d day of December, 1889, there were cast for the adoption of said constitution 12,398 votes, and for the rejection of said constitution there were cast 1,773 votes, and 13 votes scattering.

EDWARD J. CURTIS,  
*Secretary of Idaho.*  
JOSEPH P. WILSON,  
*United States Marshal.*

The foregoing canvass of votes for the adoption and the rejection of the constitution of the State of Idaho was held in my presence.

GEO. L. SHOUP,  
*Governor of Idaho.*

The character of the population of Idaho is the highest type of American manhood, being composed principally of the descendants of New England, Southern, and Western stock.

The foreigners are the hardy sons of Norway, Sweden, Germany, Canada, and Great Britain.

The committee is of the opinion that with a stable and settled government, which statehood will insure, the increase in population and development will equal that of other Western States. There is no doubt that Idaho has the resources, wealth, and population to sustain without difficulty a State government. The people of the Territory are almost unanimous in asking this recognition.

The only opposition to the admission of Idaho under the constitution, which the legal voters of the Territory adopted almost unanimously, came from the Mormons. They protested because of section 3 of article 6 of the constitution, which is as follows:

SEC. 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of public funds, bartering or selling or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the right of citizenship, or who at the time of such election is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural, or celestial marriage, or in violation of any law of this State, or of the United States, forbidding any such crime; or who in any manner teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law or to commit any such crime; or who is a member of or contributes to the support, aid, or encouragement of any order, organization, association, corporation, or society which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, or which teaches or advises that the laws of this State prescribing rules of civil conduct are not the supreme law of the State; nor shall Chinese nor persons of Mongolian descent not born in the United States, nor Indians not taxed who have not severed their tribal relations and adopted the habits of civilization either vote, serve as jurors, or hold any civil office.



Their claim was that this clause disfranchised every member of the Mormon Church. Bishop Budge, a president of "a stake" in Idaho, and the leading Mormon of the Territory, made these representations to the committee and objected to the admission on that account. The committee find that a law similar to the clause complained of in the constitution has been in force in Idaho since 1884-'85.

It will be found in section 501 of the Revised Statutes of Idaho, and is as follows:

No person under guardianship, *non compos mentis* or insane, nor any person convicted of treason, felony, or bribery in this Territory or in any other State or Territory in the Union, unless restored to civil rights; nor any person who is a bigamist or polygamist or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization, or association which teaches, advises, counsels, or encourages its members or devotees or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, or association or otherwise, is permitted to vote at any election or to hold any position or office of honor, trust, or profit within this Territory.

During the discussion before the committee in regard to the legality of this clause, Justice Field delivered the unanimous opinion of the Supreme Court of the United States as to the constitutionality of the Idaho statute, which opinion is appended to this report and marked Exhibit B.

There is nothing in the statute or the clause in the constitution which debars a good citizen, or one entitled to the franchise, from exercising political privileges. If the Mormons, or any other persons, belong to an organization which teaches and encourages acts defined by law to be crimes, they should not be intrusted with the franchise. Whenever the Mormon Church abandons its advocacy and practice of polygamy and bigamy, there is nothing in this clause to prevent its members from voting. This Mormon question has been a troublesome one for years, and has been a standing disgrace to our Government. The results show that this statute of Idaho has done more to discourage polygamy and bigamy among the Idaho Mormons than all other legislation combined.

The evils of Mormonism had become so great in that Territory that all the non-Mormons, regardless of party, united in strongly urging this legislation.

No act could more clearly indicate the high character and patriotism of the people of Idaho and their qualification for self-government than the solemn and unanimous embodiment of this clause in their constitution. The Mormons constitute only about one-tenth of the population, so there was no danger of their gaining political control of the State. Under the constitution for the State of Idaho they can not become the political balance of power so long as they advocate acts repulsive to law, order, and morality, and in this way their corrupting influence is destroyed in political affairs.

It is believed by the committee that in Idaho, at least, they will place themselves in accord with American institutions and sentiments, in order to enjoy the privileges of American citizens. The committee fully and cordially sustain and commend the action of the people of Idaho in making this clause on suffrage a part of their constitution, and report in favor of the admission of Idaho in the Union of States under the provisions of the bill reported herewith.

## APPENDIX A.

CONSTITUTION ADOPTED BY A CONSTITUTIONAL CONVENTION  
HELD AT BOISÉ CITY, IN THE TERRITORY OF IDAHO, AUGUST  
6, 1889.

## PREAMBLE.

We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution.

## ARTICLE I.

*Declaration of rights.*

SECTION 1. All men are by nature free and equal and have certain inalienable rights, among which are enjoying and defending life and liberty, acquiring, possessing, and protecting property, pursuing happiness, and securing safety.

SEC. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same whenever they may deem it necessary, and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature.

SEC. 3. The State of Idaho is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

SEC. 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise, any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the State, and the legislature shall provide by law for the punishment of such crimes.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

SEC. 6. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 7. The right of trial by jury shall remain inviolate; but in civil actions three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to a felony by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

SEC. 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases



arising in the militia when in actual service in time of war or public danger: *Provided*, That a grand jury may be summoned upon the order of the district court in the manner provided by law; *And provided further*, That after a charge has been ignored by a grand jury, no person shall be held to answer or for trial therefor upon information of the public prosecutor.

SEC. 9. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that liberty.

SEC. 10. The people shall have the right to assemble in a peaceable manner to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

SEC. 11. The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.

SEC. 12. The military shall be subordinate to the civil power; and no soldier in time of peace shall be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

SEC. 13. In all criminal prosecutions, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel.

No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law.

SEC. 14. The necessary use of lands for the construction of reservoirs or storage basins, for the purposes of irrigation, or for rights of way for the construction of canals, ditches, flumes, or pipes, to convey water to the place of use, for any useful, beneficial, or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the State, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the State.

Private property may be taken for public use, but not until a just compensation, to be ascertained in a manner prescribed by law, shall be paid therefor.

SEC. 15. There shall be no imprisonment for debt in this State except in cases of fraud.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

SEC. 17. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause, shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

SEC. 18. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character, and right and justice shall be administered without sale, denial, delay, or prejudice.

SEC. 19. No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

SEC. 20. No property qualification shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness.

SEC. 21. This enumeration of rights shall not be construed to impair or deny other rights retained by the people.

## ARTICLE II.

### *Distribution of powers.*

SECTION 1. The powers of the government of this State are divided into three distinct departments, the legislative, executive, and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

## ARTICLE III.

### *Legislative department.*

SECTION 1. The legislative power of the State shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the legislature of the State of Idaho."

SEC. 2. The senate shall consist of eighteen members, and the house of representatives of thirty-six members. The legislature may increase the number of senators and representatives: *Provided*, The number of senators shall never exceed twenty-

four, and the house of representatives shall never exceed sixty members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the State may from time to time be divided by law.

SEC. 3. The senators and representatives shall be elected for the term of two years, from and after the first day of December next following the general election.

SEC. 4. The members of the first legislature shall be apportioned to the several legislative districts of the State in proportion to the number of votes polled at the last general election for Delegate to Congress, and thereafter to be apportioned as may be provided by law: *Provided*, Each county shall be entitled to one representative.

SEC. 5. A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such districts.

SEC. 6. No person shall be a senator or representative who at the time of his election is not a citizen of the United States and an elector of this State, nor any one who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

SEC. 7. Senators and representatives, in all cases except for treason, felony, or breach of the peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same, and shall not be liable to any civil process during the session of the legislature, nor during the ten days next before the commencement thereof; nor shall a member for words uttered in debate in either house be questioned in any other place.

SEC. 8. The sessions of the Legislature shall, after the first session thereof, be held biennially, at the capital of the State, commencing on the first Monday after the first day of January, and every second year thereafter, unless a different day shall have been appointed by law, and at other times when convened by the governor.

SEC. 9. Each house when assembled shall choose its own officers, judge of the election, qualifications, and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.

SEC. 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as such house may provide. A quorum being in attendance, if either house fail to effect an organization within the first four days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said four days until an organization shall have been effected.

SEC. 11. Each house may, for good cause shown, with the concurrence of two-thirds of all the members, expel a member.

SEC. 12. The business of each house, and of the committee of the whole, shall be transacted openly and not in secret session.

SEC. 13. Each House shall keep a journal of its proceedings; and the yeas and nays of the members of either house on any question shall, at the request of any three members present, be entered on the journal.

SEC. 14. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

SEC. 15. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon: *Provided*, In case of urgency, two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present.

SEC. 16. Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

SEC. 17. Every act or joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

SEC. 18. No act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length.

SEC. 19. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and constables.



- For the punishment of crimes and misdemeanors.
- Regulating the practice of the courts of justice.
- Providing for a change of venue in civil or criminal actions.
- Granting divorces.
- Changing the names of persons or places.
- Authorizing the laying out, opening, altering, maintaining, working on, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, or any public grounds not owned by the State.
- Summoning and impaneling grand and trial juries, and providing for their compensation.
- Regulating county and township business, or the election of county and township officers.
- For the assessment and collection of taxes.
- Providing for and conducting elections, or designating the place of voting.
- Affecting estates of deceased persons, minors, or other persons under legal disabilities.
- Extending the time for collection of taxes.
- Giving effect to invalid deeds, leases, or other instruments.
- Refunding money paid into the State treasury.
- Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any person or corporation in this State, or any municipal corporation therein.
- Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.
- Legalizing as against the State the unauthorized or invalid act of any officer.
- Exempting property from taxation.
- Changing county seats; unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed: *Provided*, That the power to pass a special law shall cease as long as the legislature shall provide for such change by general law: *Provided further*, That no special law shall be passed for any one county oftener than once in six years.
- Restoring to citizenship persons convicted of infamous crimes.
- Regulating the interest on money.
- Authorizing the creation, extension, or impairing of liens.
- Chartering or licensing ferries, bridges, or roads.
- Remitting fines, penalties, or forfeitures.
- Providing for the management of common schools.
- Creating offices or prescribing the powers and duties of officers in counties, cities, townships, election districts, or school districts, except as in this constitution otherwise provided.
- Changing the law of descent or succession.
- Authorizing the adoption or legitimization of children.
- For limitation of civil or criminal actions.
- Creating any corporation.
- Creating, increasing, or decreasing fees, percentages, or allowances of public officers during the term for which said officers are elected or appointed.
- SEC. 20. The legislature shall not authorize any lottery or gift enterprise, under any pretense or for any purpose whatever.
- SEC. 21. All bills or joint resolutions passed shall be signed by the presiding officers of the respective houses.
- SEC. 22. No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.
- SEC. 23. Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such pay shall not exceed for each member, except the presiding officers, in the aggregate three hundred dollars for per diem allowances for any one session; and shall receive each the sum of ten cents per mile each way by the usual traveled route.
- When convened in extra session by the governor, they shall each receive five dollars per day; but no extra session shall continue for a longer period than twenty days, except in case of the first session of the legislature. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the legislature shall each in virtue of his office receive an additional compensation equal to one-half his per diem allowance as a member: *Provided*, That whenever any member of the legislature shall travel on a free pass in coming to or returning from the session of the legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member.
- SEC. 24. The first concern of all good government is the virtue and sobriety of the

people, and the purity of the home. The legislature should further all wise and well directed efforts for the promotion of temperance and morality.

SEC. 25. The members of the legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the constitution of the State of Idaho, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the best of my ability." And such oath may be administered by the governor, secretary of state, or judge of the supreme court, or presiding officer of either house.

#### ARTICLE IV.

##### *Executive department.*

SECTION 1. The executive department shall consist of a governor, lieutenant-governor, secretary of state, State auditor, State treasurer, attorney-general, and superintendent of public instruction, each of whom shall hold his office for two years, beginning on the first Monday in January next after his election, except as otherwise provided in this constitution. The officers of the executive department, excepting the lieutenant-governor, shall, during their term of office, reside at the seat of government, where they shall keep the public records, books, and papers. They shall perform such duties as are prescribed by this constitution and as may be prescribed by law.

SEC. 2. The officers named in section one of this article shall be elected by the qualified electors of the State at the time and places of voting for members of the legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislature, at its next regular session, shall forthwith, by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section one shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

SEC. 3. No person shall be eligible to the office of governor or lieutenant-governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, State auditor, superintendent of public instruction or State treasurer, unless he shall have attained the age of twenty-five years; nor to the office of attorney-general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the State or Territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the State or Territory two years next preceding his election.

SEC. 4. The governor shall be commander-in-chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

SEC. 5. The supreme executive power of the State is vested in the governor, who shall see that the laws are faithfully executed.

SEC. 6. The governor shall nominate, and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If, during the recess of the senate, a vacancy occurs in any State or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the supreme or district court, secretary of state, State auditor, State treasurer, attorney-general, or superintendent of public instruction shall be vacated by death, resignation, or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

SEC. 7. The governor, secretary of state, and attorney-general shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose, in all cases of offenses against the State except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made and regulate proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session,



and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the Legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the legislature, at each regular session, each case of remission or fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon, or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto.

SEC. 8. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or State institution. The governor shall at the commencement of each session, and from time to time, by message, give to the legislature information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall also send to the legislature a statement, with vouchers, of the expenditures of all moneys belonging to the State and paid out by him. He shall also, at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the State.

SEC. 9. The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the senate in extraordinary session for the transaction of executive business.

SEC. 10. Every bill passed by the legislature shall before it becomes a law, be presented to the governor. If he approve he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journals and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present in that house, it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor to the legislature within five days (Sundays excepted) after it shall have been presented to him shall become a law in like manner as if he had signed it, unless the legislature shall, by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of state within ten days after such adjournment (Sundays excepted) or become a law.

SEC. 11. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts approved shall become a law and the item or items disapproved shall be void, unless enacted in the manner following: If the legislature be in session, he shall within five days transmit to the house within which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

SEC. 12. In case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the governor, or his death, removal from office, resignation, absence from the State, or inability to discharge the powers and duties of his office, the powers, duties, and emoluments of the office for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

SEC. 13. The lieutenant-governor shall be president of the senate, but shall vote



only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of lieutenant-governor until the vacancy is filled or the disability removed.

SEC. 14. In case of the failure to qualify in his office, death, resignation, absence from the State, impeachment, conviction of treason, felony or other infamous crime, or disqualification from any cause, of both governor and lieutenant-governor, the duties of the governor shall devolve upon the president of the senate pro tempore, until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

SEC. 15. There shall be a seal of this State, which shall be kept by the secretary of state and used by him officially, and shall be called "The great seal of the state of Idaho." The seal of the Territory of Idaho as now used shall be the seal of the State until otherwise provided by law.

SEC. 16. All grants and permissions shall be in the name and by the authority of the State of Idaho, sealed with the great seal of the State, signed by the governor, and countersigned by the secretary of state.

SEC. 17. An account shall be kept by the officers of the executive department and of all public institutions of the State of all moneys received by them severally, from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislature, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislature.

SEC. 18. The governor, secretary of state, and attorney-general shall constitute a board of State prison commissioners, which board shall have such supervision of all matters connected with the State prison as may be prescribed by law. They shall also constitute a board of examiners, with power to examine all claims against the State, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the State, except salaries and compensation of officers fixed by law, shall be passed upon by the legislature without first having been considered and acted upon by said board.

SEC. 19. The governor, secretary of state, State auditor, State treasurer, attorney-general, and superintendent of public instruction shall, quarterly as due, during their continuance in office, receive for their services compensation, which for the term next ensuing after the adoption of this constitution is fixed as follows: Governor, three thousand dollars per annum; secretary of state, one thousand eight hundred dollars per annum, State auditor, one thousand eight hundred dollars per annum; State treasurer, one thousand dollars per annum; attorney-general, two thousand dollars per annum; and superintendent of public instruction, one thousand five hundred dollars per annum. The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the session of the legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

No officer named in this section shall receive for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty shall be collected in advance and deposited with the State treasurer quarterly to the credit of the State. The legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase shall affect the salaries of the officers then in office during their term: *Provided, however*, the legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant-governor, secretary of state, attorney-general, and superintendent of public instruction while traveling within the State in the performance of official duty.

## ARTICLE V.

### *Judicial department.*

SECTION 1. The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, are hereby prohibited; and there shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party against a person charged with a public offense for the punishment of the same shall be termed a criminal action.



Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

SEC. 2. The judicial power of the State shall be vested in a court for the trial of impeachments, a supreme court, district courts, probate courts, courts of justices of the peace, and such other courts inferior to the supreme court as may be established by law for any incorporated city or town.

SEC. 3. The court for the trial of impeachments shall be the senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law.

SEC. 4. The house of representatives solely shall have the power of impeachment. No person shall be convicted without the concurrence of two-thirds of the senators elected. When the governor is impeached the chief-justice shall preside.

SEC. 5. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture of estate.

SEC. 6. The supreme court shall consist of three justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. The justices of the supreme court shall be elected by the electors of the State at large. The terms of office of the justices of the supreme court, except as in this article otherwise provided, shall be six years. The justices of the supreme court shall, immediately after the first election under this constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the justices of the supreme court, who shall, for that purpose, assemble at the seat of government, and they shall cause the result thereof to be certified to by the secretary of state and filed in his office. The justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief-justice, and shall preside at all terms of the supreme court, and, in case of his absence, the justice having in like manner the next shortest term to serve shall preside in his stead.

SEC. 7. No justice of the supreme court shall be eligible to any other office of trust or profit under the laws of this State during the term for which he was elected.

SEC. 8. At least four terms of the supreme court shall be held annually; two terms at the seat of State government, and two terms at the city of Lewiston, in Nez Perces County. In case of epidemic, pestilence, or destruction of court-houses, the justices may hold the terms of the supreme court provided by this section at other convenient places, to be fixed by a majority of said justices. After six years the legislature may alter the provisions of this section.

SEC. 9. The supreme court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof. The supreme court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction.

SEC. 10. The supreme court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the legislature for its action.

SEC. 11. The State shall be divided into five judicial districts, for each of which a judge shall be chosen by the qualified electors thereof, whose term of office shall be four years. And there shall be held a district court in each county, at least twice in each year, to continue for such time in each county as may be prescribed by law; but the legislature may reduce or increase the number of districts, district judges, and district attorneys. This section shall not be construed to prevent the holding of special terms under such regulations as may be provided by law.

SEC. 12. Every judge of the district court shall reside in the district for which he is elected. A judge of any district court may hold a district court in any county at the request of the judge of the district court thereof, and upon the request of the governor it shall be his duty to do so; but a cause in the district court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause.

SEC. 13. The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government; but the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the supreme court, so far as the same may be done without conflict with this constitution.

SEC. 14. The legislature may provide for the establishment of special courts for

the trial of misdemeanors in incorporated cities and towns where the same may be necessary.

SEC. 15. The clerk of the supreme court shall be appointed by the court, and shall hold his office during the pleasure of the court. He shall receive such compensation for his services as may be provided by law.

SEC. 16. A clerk of the district court for each county shall be elected by the qualified voters thereof at the time and in the manner prescribed by law for the election of members of the legislature, and shall hold his office for the term of four years.

SEC. 17. The salary of the justices of the supreme court, until otherwise provided by the legislature, shall be three thousand dollars each per annum, and the salary of the judges of the district court, until otherwise provided by the legislature, shall be three thousand dollars each per annum, and no justice of the supreme court, or judge of the district court, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination, thirty days prior to the taking and subscribing such oath.

SEC. 18. A district attorney shall be elected for each judicial district by the qualified electors thereof, who shall hold office for the term of four years, and perform such duties as may be prescribed by law. He shall be a practicing attorney at law and a resident and elector of the district. He shall receive as compensation for his services twenty-five hundred dollars per annum.

SEC. 19. All vacancies occurring in the offices provided for by this article of the constitution shall be filled as provided by law.

SEC. 20. The district court shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.

SEC. 21. The probate courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, and appointment of guardians; also jurisdiction to hear and determine all civil cases wherein the debt or damage claimed does not exceed the sum of five hundred dollars, exclusive of interest, and concurrent jurisdiction with justices of the peace in criminal cases.

SEC. 22. In each county of this State there shall be elected justices of the peace as prescribed by law. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of three hundred dollars, exclusive of interest, nor where the boundaries or title to any real property shall be called in question.

SEC. 23. No person shall be eligible to the office of district judge unless he be learned in the law, thirty years of age, and a citizen of the United States, and shall have resided in the State or Territory at least two years next preceding his election, nor unless he shall have been, at the time of his election, an elector in the judicial district for which he is elected.

SEC. 24. Until otherwise provided by law, the judicial districts shall be five in number, and constituted of the following counties, viz: First district, Shoshone and Kootenai; second district, Latah, Nez Percé, and Idaho; third district, Washington, Ada, Boise, and Owyhee; fourth district, Cassia, Elmore, Logan, and Alturas; fifth district, Bear Lake, Bingham, Oneida, Lemhi, and Custer.

SEC. 25. The judges of the district courts shall, on or before the first day of July in each year, report in writing to the justices of the supreme court such defects or omissions in the laws as their knowledge and experience may suggest, and the justices of the supreme court shall, on or before the first day of December of each year, report in writing to the governor, to be by him transmitted to the legislature, together with his message, such defects and omissions in the constitution and laws as they may find to exist.

SEC. 26. All laws relating to courts shall be general and of uniform operation throughout the State, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

SEC. 27. The legislature may by law diminish or increase the compensation of any or all of the following officers, to wit: governor, lieutenant-governor, secretary of state, State auditor, State treasurer, attorney-general, superintendent of public instruction, commissioner of immigration and labor, justices of the supreme court, and judges of the districts courts and district attorneys; but no diminution or increase shall affect the compensation of the officer then in office during his term: *Provided, however,* That the legislature may provide for the payment of actual and necessary expenses of the governor, secretary of state, attorney-general, and superintendent of public instruction incurred while in performance of official duty.



## ARTICLE VI.

*Suffrage and elections.*

SECTION 1. All elections by the people must be by ballot. An absolutely secret ballot is hereby guarantied, and it shall be the duty of the legislature to enact such laws as shall carry this section into effect.

SEC. 2. Except as in this article otherwise provided, every male citizen of the United States twenty-one years old, who has actually resided in this State (or Territory) for six months, and in the county where he offers to vote thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article, may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

SEC. 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic, or insane, or who has at any place been convicted of treason, felony, embezzlement of the public funds, bartering or selling or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship; or who, at the time of such election, is confined in prison on conviction of a criminal offense; or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural, or celestial marriage, or in violation of any law of this State or of the United States forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of or contributes to the support, aid, or encouragement of any order, organization, association, corporation, or society, which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, or which teaches or advises that the laws of this State prescribing rules of civil conduct are not the supreme law of the State; nor shall Chinese or persons of Mongolian descent, not born in the United States, nor Indians, not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office.

SEC. 4. The legislature may prescribe qualifications, limitations, and conditions for the right of suffrage additional to those prescribed in this article, but shall never annul any of the provisions in this article contained.

SEC. 5. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States, nor while a student of any institution of learning, nor while kept at any alms-house or other asylum at the public expense.

## ARTICLE VII.

*Revenue and Finance.*

SECTION 1. The fiscal year shall commence on the second Monday of January in each year, unless otherwise provided by law.

SEC. 2. The legislature shall provide such revenue as may be needful by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this State); also a per capita tax: *Provided*, The legislature may exempt a limited amount of improvements upon land from taxation.

SEC. 3. The word "property" as herein used shall be defined and classified by law.

SEC. 4. The property of the United States, the State, counties, towns, cities, and other municipal corporations, and public libraries shall be exempt from taxation.

SEC. 5. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: *Provided*, That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the Territory shall continue until changed by the legislature of the State: *Provided, further*, That duplicate taxation of property for the same purpose during the same year, is hereby prohibited.

SEC. 6. The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by law invest in the corporate author

ities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

SEC. 7. All taxes levied for State purposes shall be paid into the State treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes.

SEC. 8. The power to tax corporations or corporate property, both real and personal, shall never be relinquished or suspended, and all corporations in this State or doing business therein shall be subject to taxation for State, county, school, municipal, and other purposes, on real and personal property owned or used by them, and not by this constitution exempted from taxation within the territorial limits of the authority levying the tax.

SEC. 9. The rate of taxation of real and personal property for State purposes shall never exceed ten mills on each dollar of assessed valuation; and if the taxable property in the State shall amount to fifty million dollars the rate shall not exceed five mills on each dollar of valuation; and whenever the taxable property in the State shall amount to one hundred million dollars the rate shall not exceed three mills on each dollar of valuation; and whenever the taxable property in the State shall amount to three hundred million dollars the rate shall never thereafter exceed one and one-half mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

SEC. 10. The making of profit, directly or indirectly, out of State, county, city, town, township, or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

SEC. 11. No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the State during any fiscal year shall exceed the total tax then provided for by law and applicable to such appropriation or expenditure, unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the State, or assist in defending the United States in time of war.

SEC. 12. There shall be a State board of equalization, consisting of the governor, secretary of State, attorney-general, State auditor, and State treasurer, whose duties shall be prescribed by law. The board of county commissioners for the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county under such rules and regulations as shall be prescribed by law.

SEC. 13. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

SEC. 14. No money shall be drawn from the county treasuries except upon the warrant of a duly authorized officer, in such manner and form as shall be prescribed by the legislature.

SEC. 15. The legislature shall provide by law such a system of county finance as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that whenever any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners, in addition to other taxes provided by law, shall levy a special tax, not to exceed ten mills on the dollar of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax all warrants issued before such levy shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year not needed for current expenses shall be transferred to said redemption fund.

SEC. 16. The legislature shall pass all laws necessary to carry out the provisions of this article.

## ARTICLE VIII.

### *Public indebtedness and subsidies.*

SECTION 1. The legislature shall not, in any manner, create any debt or debts, liability or liabilities which shall singly or in the aggregate, exclusive of the debt of the Territory at the date of its admission as a State, exceed the sum of one and one-half per centum upon the assessed value of the taxable property in the State, except in case of war to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein,



which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also for the payment and discharge of the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by the authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State for three months next preceding the election at which it is submitted to the people. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

SEC. 2. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association, municipality, or corporation; nor shall the State, directly or indirectly, become a stockholder in any association or corporation.

SEC. 3. No county, city, town, township, board of education, or school district, or other subdivision of the State, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: *Provided*, That this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the State.

SEC. 4. No county, city, town, township, board of education, or school district, or other subdivision, shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or in aid of any individual, association, or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract, or liability of any individual, association, or corporation in or out of this State.

#### ARTICLE IX.

##### *Education and school lands.*

SEC. 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general, uniform, and thorough system of public free common schools.

SEC. 2. The general supervision of the public schools of the State shall be vested in a board of education, whose powers and duties shall be prescribed by law; the superintendent of public instruction, the secretary of state, and attorney-general shall constitute the board, of which the superintendent of public instruction shall be president.

SEC. 3. The public school fund of the State shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the State, and shall be distributed among the several counties and school districts of the State in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The State treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The State shall supply all losses thereof that may in any manner occur.

SEC. 4. The public school fund of the State shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the State by the General Government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation, under any law or grant of the General Government; and of all other grants of land or money made to the State from the General Government for general educational purposes, or where no other special purpose is indicated in such grants; all estates or distributive shares of estates that may escheat to the State; all unclaimed shares and dividends of any corporation incorporated under the laws of the State; and all other grants, gifts, devises or bequests made to the State for general educational purposes.

SEC. 5. Neither the legislature nor any county, city, town, township, school district, or other public corporation shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help, support or sus-

tain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian or religious purpose.

SEC. 6. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts, or documents of a political, sectarian, or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

SEC. 7. The governor, superintendent of public instruction, secretary of state, and attorney-general, shall constitute the State board of land commissioners, who shall have the direction, control, and disposition of the public lands of the State, under such regulations as may be prescribed by law.

SEC. 8. It shall be the duty of the State board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be, granted to the State by the General Government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: *Provided*, That no school lands shall be sold for less than ten dollars per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the General Government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the sale of timber on all State lands, and for the faithful application of the proceeds thereof in accordance with the terms of said grants: *Provided*, That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed one hundred and sixty acres to any one individual company or corporation.

SEC. 9. The legislature may require by law that every child of sufficient mental and physical ability shall attend the public school throughout the period between the ages of six and eighteen years for a time equivalent to three years, unless educated by other means.

SEC. 10. The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments heretofore granted thereto by the Territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres to any one person, company, or corporation.

SEC. 11. The permanent educational funds, other than funds arising from the disposition of university lands belonging to the State, shall be loaned on first mortgage on improved farm lands within the State, or on State or United States bonds, under such regulations as the legislature may provide: *Provided*, That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings.

## ARTICLE X.

### *Public institutions.*

SECTION 1. Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law.

SEC. 2. The seat of government of the State of Idaho shall be located at Boise City for twenty years from the admission of the State, after which time the legislature may provide for its re-location, by submitting the question to a vote of the electors of the State at some general election.



SEC. 3. The legislature may submit the question of the location of the seat of government to the qualified voters of the State at the general election then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said legislature shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the next general election.

SEC. 4. All property and institutions of the Territory shall, upon adoption of the constitution, become the property and institutions of the State of Idaho.

SEC. 5. The governor, secretary of state, and attorney-general shall constitute a board, to be known as the State prison commissioners, and shall have the control, direction, and management of the penitentiaries of the State. The governor shall be chairman, and the board shall appoint a warden, who may be removed at pleasure. The warden shall have the power to appoint his subordinates, subject to the approval of the said board.

SEC. 6. There shall be appointed by the governor three directors of the asylum for the insane, who shall be confirmed by the senate. They shall have the control, direction, and management of the said asylums, under such regulations as the legislature shall provide, and hold their offices for a period of two years. The directors shall have the appointment of the medical superintendent, who shall appoint the assistants with the approval of the directors.

SEC. 7. The legislature for sanitary reasons may cause the removal to more suitable localities of any of the institutions mentioned in section one of this article.

## ARTICLE XI.

### *Corporations, public and private.*

SECTION 1. All existing charters or grants of special or exclusive privileges, under which the corporators or grantees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity.

SEC. 2. No charter of incorporation shall be granted, extended, changed, or amended by special law, except for such municipal, charitable, educational, penal, or reformatory corporations as are or may be under the control of the State, but the legislature shall provide by general law for the organization of corporations hereafter to be created: *Provided*, That any such general law shall be subject to future repeal or alteration by the legislature.

SEC. 3. The legislature may provide by law for altering, revoking, or annulling any charter of incorporation existing and revocable at the time of the adoption of this constitution, in such manner, however, that no injustice shall be done to the corporators.

SEC. 4. The legislature shall provide by law that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote in person, or by proxy, for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner.

SEC. 5. All railroads shall be public highways, and all railroad, transportation, and express companies shall be common carriers, and subject to legislative control, and the legislature shall have power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies or other common carriers from one point to another in the State. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State, and to connect within or at the State line with railroads of other States and Territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad under such regulations as may be prescribed by law and upon making due compensation.

SEC. 6. All individuals, associations, and corporations similarly situated shall have equal rights to have persons or property transported on and over any railroad, transportation, or express route in this State, except that preference may be given to perishable property. No undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class by any railroad, or transportation, or express company between persons or places within the State; but excursion or commutation tickets may be issued and sold at special

rates, provided such rates are the same to all persons. No railroad or transportation or express company shall be allowed to charge, collect, or receive, under penalties which the legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State. No railroad, express, or transportation company, nor any lessee, manager, or other employé thereof, shall give any preference to any individual, association, or corporation in furnishing cars or motive power or for the transportation of money or other express matter.

SEC. 7. No corporation other than municipal corporations in existence at the time of the adoption of this constitution shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form.

SEC. 8. The right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as property of individuals; and the police powers of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

SEC. 9. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

SEC. 10. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same upon whom process may be served, and no company or corporation formed under the laws of any other country, State, or Territory, shall have or be allowed to exercise or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this State.

SEC. 11. No street or other railroad shall be constructed within any city, town, or incorporated village without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street or other railroad.

SEC. 12. The legislature shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the State a new liability in respect to transactions or considerations already past.

SEC. 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this State and connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section.

SEC. 14. If any railroad, telegraph, express, or other corporation organized under any of the laws of this State shall consolidate by sale or otherwise with any railroad, telegraph, express, or other corporation organized under any of the laws of any other State or Territory or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise as if said consolidation had not taken place.

SEC. 15. The legislature shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

SEC. 16. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.

SEC. 17. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

SEC. 18. That no incorporated company, or any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people, and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.



## ARTICLE XII.

*Corporations—Municipal.*

SECTION 1. The legislature shall provide by general laws for the incorporation, organization, and classification of the cities and towns, in proportion to the population, which laws may be altered, amended, or repealed by the general laws. Cities and towns heretofore incorporated may become organized under such general laws whenever a majority of the electors at a general election shall so determine, under such provision therefor as may be made by the legislature.

SEC. 2. Any county or incorporated city or town may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with its charter or with the general laws.

SEC. 3. The State shall never assume the debts of any county, town, or other municipal corporation, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war.

SEC. 4. No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation, or association whatever, or raise money for, or make donation, or loan its credit to, or in aid of, any such company or association: *Provided*, That cities and towns may contract indebtedness for school, water, sanitary, and illuminating purposes: *Provided*, That any city or town contracting such indebtedness shall own its just proportion of the property thus created, and receive from any income arising therefrom its proportion to the whole amount so invested.

## ARTICLE XIII.

*Immigration and labor.*

SECTION 1. There shall be established a bureau of immigration, labor, and statistics, which shall be under the charge of a commissioner of immigration, labor, and statistics, who shall be appointed by the governor, by and with the consent of the senate. The commissioner shall hold his office for two years and until his successor shall have been appointed and qualified, unless sooner removed. The commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity. The commissioner shall annually make a report in writing to the governor of the State of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the bureau.

SEC. 2. Not more than eight hour's actual work shall constitute a lawful day's work on all State and municipal works.

SEC. 3. All labor of convicts confined in the State's prison shall be done within the prison grounds, except where the work is done on public works under the direct control of the State.

SEC. 4. The employment of children under the age of fourteen years in underground mines is prohibited.

SEC. 5. No person not a citizen of the United States, or who has not declared his intention to become such, shall be employed upon or in connection with any State or municipal works.

SEC. 6. The legislature shall provide, by proper legislation, for giving to mechanics, laborers, and material men, an adequate lien on the subject-matter of their labor.

SEC. 7. The legislature may establish boards of arbitration, whose duty it shall be to hear and determine all differences and controversies between laborers and their employers which may be submitted to them in writing by all the parties. Such boards of arbitration shall possess all the powers and authority, in respect to administering oaths, subpoenaing witnesses, and compelling their attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on justices of the peace.

SEC. 8. The commissioner of immigration, labor, and statistics shall perform such duties and receive such compensation as may be prescribed by law.

## ARTICLE XIV.

*Militia.*

SECTION 1. All able-bodied male persons, residents of this State, between the ages of eighteen and forty-five years, shall be enrolled in the militia, and perform such military duty as may be required by law; but no person having conscientious scruples against bearing arms shall be compelled to perform such duty in time of peace.

Every person claiming such exemption from service shall, in lieu thereof, pay into the school fund of the county of which he may be a resident an equivalent in money, the amount and manner of payment to be fixed by law.

SEC. 2. The legislature shall provide by law for the enrollment, equipment, and discipline of the militia, to conform as nearly as practicable to the regulations for the government of the armies of the United States, and pass such laws to promote volunteer organizations as may afford them effectual encouragement.

SEC. 3. All militia officers shall be commissioned by the governor, the manner of their selection to be provided by law, and may hold their commissions for such period of time as the legislature may provide.

SEC. 4. All military records, banners, and relics of the State, except when in lawful use, shall be preserved in the office of the adjutant-general as an enduring memorial of the patriotism and valor of the soldiers of Idaho, and it shall be the duty of the legislature to provide by law for the safe-keeping of the same.

SEC. 5. All military organizations under the laws of this State shall carry no other device, banner, or flag than that of the United States or the State of Idaho.

SEC. 6. No armed police force or detective agency or armed body of men shall ever be brought into this State for the suppression of domestic violence, except upon the application of the legislature or the executive when the legislature can not be convened.

## ARTICLE XV.

### *Water rights.*

SECTION 1. The use of all waters now appropriated; or that may hereafter be appropriated for sale, rental, or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner prescribed by law.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city, or town, or water district, or the inhabitants thereof, is a franchise, and can not be exercised except by authority of and in the manner prescribed by law.

SEC. 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section fourteen of Article I, of this constitution.

SEC. 4. Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented, or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.

SEC. 5. Whenever more than one person has settled upon or improved land with the view of receiving water for agricultural purposes under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

SEC. 6. The legislature shall provide by law the manner in which reasonable maximum rates may be established to be charged for the use of water sold, rented, or distributed for any useful or beneficial purpose.



## ARTICLE XVI.

*Live-stock.*

SECTION 1. The legislature shall pass all necessary laws to provide for the protection of live-stock against the introduction or spread of pleuro-pneumonia, glanders, splenetic or Texas fever, and other infectious or contagious diseases. The legislature may also establish a system of quarantine or inspection, and such other regulations as may be necessary for the protection of stock-owners and most conducive to the stock interests within this State.

## ARTICLE XVII.

*State boundaries.*

SECTION 1. The name of this State is Idaho, and its boundaries are as follows: Beginning at a point in the middle channel of the Snake River where the northern boundary of Oregon intersects the same; then follow down the channel of Snake River to a point opposite the mouth of the Kooskooskia or Clearwater River; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root Mountains; thence southward along the crest of the Bitter Root Mountains till its intersection with the Rocky Mountains; thence southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel to the eastern boundary of the State of Oregon; thence north along that boundary to the place of beginning.

## ARTICLE XVIII.

*County Organization.*

SECTION 1. The several counties of the Territory of Idaho as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six years, except as provided by existing laws. No person shall vote at any county-seat election who has not resided in the county six months and in the precinct ninety days.

SEC. 3. No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division: *Provided*, That this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed. When any part of a county is stricken off and attached to another county the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

SEC. 4. No new county shall be established which shall reduce any county to an area of less than four hundred square miles, nor shall a new county be formed containing an area of less than four hundred square miles.

SEC. 5. The legislature shall establish, subject to the provisions of this article, a system of county governments which shall be uniform throughout the State, and by general laws shall provide for township or precinct organizations.

SEC. 6. The legislature, by general and uniform laws, shall provide for the election biennially in each of the several counties of the State of county commissioners, a sheriff, county treasurer, who is *ex officio* public administrator; probate judge, who is *ex officio* county superintendent of public instruction; county assessor, who is *ex officio* tax collector; a coroner, and a surveyor. The clerk of the district court shall be *ex officio* auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for the election of such township, precinct, and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct, and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, auditor, and recorder, and

clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require; said deputies and clerical assistance to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected.

SEC. 7. The officers provided by section six of this article shall receive annually as compensation for their services as follows: Sheriff, not more than four thousand dollars and not less than one thousand dollars, together with such mileage as may be prescribed by law; clerk of the district court, who is *ex officio* auditor and recorder, not more than three thousand dollars and not less than five hundred dollars; probate judge, who is *ex officio* county superintendent of public instruction, not more than two thousand dollars and not less than five hundred dollars; county assessor, who is *ex officio* tax collector, not more than three thousand dollars and not less than five hundred dollars; county treasurer, who is *ex officio* public administrator, not more than one thousand dollars and not less than three hundred dollars; coroner, not more than five hundred dollars; county surveyor, not more than one thousand dollars; county commissioners, such per diem and mileage as may be prescribed by law, and justices of the peace and constables, such fees as may be prescribed by law.

SEC. 8. The compensation provided in section seven for the officers therein mentioned shall be paid by fees or commissions, or both, as prescribed by law. All fees and commissions received by such officers in excess of the maximum compensation per annum provided for each in section seven of this article shall be paid to the county treasurer for the use and benefit of the county. In case the fees received in any one year by any one of such officers shall not amount to the minimum compensation per annum therein provided, he shall be paid by the county a sum sufficient to make his aggregate annual compensation equal to such minimum compensation.

SEC. 9. The neglect or refusal of any officer named in this article to account for and pay into the county treasury any money received as fees or compensation in excess of the maximum amount allowed to such officer by the provisions of this article within forty days after the receipt of the same shall be a felony, and the grade of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense.

SEC. 10. The board of county commissioners shall consist of three members, whose term of office shall be two years.

SEC. 11. County, township, and precinct officers shall perform such duties as shall be prescribed by law.

## ARTICLE XIX.

### *Apportionment.*

SECTION 1. Until otherwise provided by law the apportionment of the two houses of the legislature shall be as follows:

The first senatorial districts shall consist of the county of Shoshone, and shall elect two senators.

The Second shall consist of the counties of Kootenai and Latah, and shall elect one senator.

The third shall consist of the counties of Nez Percés and Idaho, and shall elect one senator.

The fourth shall consist of the counties of Nez Percés and Latah, and shall elect one senator.

The fifth shall consist of the county of Latah, and shall elect one senator.

The sixth shall consist of the county of Bois , and shall elect one senator.

The seventh shall consist of the county of Custer, and shall elect one senator.

The eighth shall consist of the county of Lemhi, and shall elect one senator.

The ninth shall consist of the county of Logan, and shall elect one senator.

The tenth shall consist of the county of Bingham, and shall elect one senator.

The eleventh shall consist of the counties of Bear Lake, Oneida, and Bingham, and shall elect one senator.

The twelfth shall consist of the counties of Owyhee and Cassia, and shall elect one senator.

The thirteenth shall consist of the county of Elmore, and shall elect one senator.

The fourteenth shall consist of the county of Alturas, and shall elect one senator.

The fifteenth shall consist of the county of Ada, and shall elect two senators.

The sixteenth shall consist of the county of Washington, and shall elect one senator.

SEC. 2. The several counties shall elect the following members of the house of representatives:

The county of Ada, three members.



The counties of Ada and Elmore, one member.

The county of Alturas, two members.

The county of Boise, two members.

The county of Bear Lake, one member.

The county of Bingham, three members.

The county of Cassia, one member.

The county of Custer, two members.

The county of Elmore, one member.

The county of Idaho, one member.

The counties of Idaho and Nez Percés, one member.

The county of Kootenai, one member.

The county of Latah, two members.

The counties of Kootenai and Latah, one member.

The county of Logan, two members.

The county of Lemhi, two members.

The county of Nez Percés, one member.

The county of Oneida, one member.

The county of Owyhee, one member.

The county of Shoshone, four members.

The county of Washington, two members.

The counties of Bingham, Logan, and Alturas, one member.

## ARTICLE XX.

### *Amendments.*

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the State at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election, in not less than one newspaper of general circulation published in each county, and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

SEC. 2. If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

SEC. 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members not less than double the number of the most numerous branch of the legislature.

SEC. 4. Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.

## ARTICLE XXI.

### *Schedule and ordinance.*

SECTION 1. That no inconvenience may arise from a change of the Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, claims, liabilities, and obligations against the Territory of Idaho, of whatsoever nature, and rights of individuals and of bodies corporate, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Idaho, shall be as valid as if issued in the name of the State.

SEC. 2. All laws now in force in the Territory of Idaho which are not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

SEC. 3. All fines, penalties, forfeitures, and escheats accruing to the Territory of Idaho shall accrue to the use of the State.

SEC. 4. All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid and shall pass over to and may be prosecuted in the name of the State; and all bonds, obligations, or other undertakings executed by this Territory, or to any other officer in his official capacity, shall pass over to the proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen, or which may arise before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the State.

SEC. 5. All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of this Territory, shall continue to hold and exercise their respective offices and appointments until suspended under this constitution.

SEC. 6. This constitution shall be submitted for adoption or rejection to a vote of the electors qualified by the laws of this Territory to vote at all elections at an election to be held on the Tuesday next after the first Monday in November, anno Domini eighteen hundred and eighty-nine. Said election shall be conducted in all respects in the same manner as provided by the laws of the Territory for general elections, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections, and abstracts of such returns duly certified shall be transmitted to the board of canvassers now provided by law for canvassing the returns of votes for Delegate in Congress. The said canvassing board shall canvass the votes so returned and certify and declare the result of said election in the same manner as is required by law for the election of said Delegate.

At the said election the ballots shall be in the following form: For the constitution—yes; no.

And as a heading to each of said ballots shall be printed on each ballot the following instructions to voters:

All persons who desire to vote for the constitution, or any of the articles submitted to a separate vote, may erase the word "no."

All persons who desire to vote against the constitution, or against any article submitted separately, may erase the word "yes."

Any person may have printed or written on his ballot only the words, "For the constitution," or, "Against the constitution," and such ballots shall be counted for or against the constitution accordingly.

SEC. 7. This constitution shall take effect and be in full force immediately upon the admission of the Territory as a State.

SEC. 8. Immediately upon the admission of the Territory as a State, the governor of the Territory, or in case of his absence or failure to act, the secretary of the Territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation, which shall be published, and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people of all State, district, county, township, and other officers, created and made elective by this constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation, nor more than ninety days after the admission of the Territory as a State.

SEC. 9. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given, in the manner and for the length of time provided by the laws of the Territory in cases of general elections for Delegate to Congress and county and other officers. Every qualified elector of the Territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the Territory for general elections, and returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general election; but returns for all State and district officers and members of the legislature shall be made to the canvassing board hereinafter provided for.

SEC. 10. The governor, secretary, controller, and attorney-general of the Territory, and the president of this convention, or a majority of them, shall constitute a board of canvassers to canvass the vote at such elections for all State and district officers and members of the legislature. The said board shall assemble at the seat of government of the Territory on the thirtieth day after the date of such election (or on the following day if such day fall on Sunday), and proceed to canvass the votes for all State and district officers and members of the legislature, in the manner provided by the laws of the Territory for canvassing the vote for Delegate to Congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the Territory an abstract certified by them, of the number of votes cast for each person for each of said offices, and of the total number of votes cast in each county.

SEC. 11. The canvassing boards of the several counties shall issue certificates of



election to the several persons found by them to have been elected to the several county and precinct offices.

SEC. 12. All officers elected at such election shall, within thirty days after they have been declared elected, take the oath required by this constitution, and give the same bond required by the law of the Territory to be given in case of like officers of the Territory, district, or county, and shall thereupon enter upon the duties of their respective offices; but the legislature may require by law all such officers to give other or further bonds as a condition of their continuance in office.

SEC. 13. All officers elected at said election shall hold their offices until the legislature shall provide by law, in accordance with this constitution, for the election of their successors, and until such successors shall be elected and qualified.

SEC. 14. The governor-elect of the State, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the legislature of the State at the seat of government on a day to be named in said proclamation and which shall not be less than thirty nor more than sixty days after the date of such proclamation. Within ten days after the organization of the legislature both houses of the legislature shall then and there proceed to elect as provided by law two Senators of the United States for the State of Idaho. At said election the two persons who shall receive the majority of all the votes cast by said senators and representatives shall be elected as such United States Senators and shall be so declared by the presiding officers of said joint session. The presiding officers of the senate and house shall issue a certificate to each of said Senators certifying his election, which certificates shall also be signed by the governor and attested by the secretary of state.

SEC. 15. The legislature shall pass all necessary laws to carry into effect the provisions of this constitution.

SECTION 16. Whenever any two of the judges of the supreme court of the State elected under the provisions of this constitution shall have qualified in their offices, the causes then pending in the supreme court of the Territory, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the State; and until so superseded the supreme court of the Territory and the judges thereof shall continue, with like powers and jurisdiction, as if this constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this constitution shall have qualified in office, the several causes then pending in the district court of the Territory within any county in such district, and the records, papers, and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the State for such county; and until the district courts of this Territory shall be superseded in the manner aforesaid the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the Territory.

SEC. 17. Until otherwise provided by law the seals now in use in the supreme and district courts of this Territory are hereby declared to be the seals of the supreme and district courts, respectively, of the State.

SEC. 18. Whenever this constitution shall go into effect, the books, records, and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the probate court of the same county of the State, and the said probate court shall proceed to final decree or judgment, order, or other determination in the said several matters and causes as the said probate court might have done as if this constitution had not been adopted.

SEC. 19. It is ordained by the State of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship. And the people of the State of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to the citizens of the United States residing without the said State of Idaho shall never be taxed at a higher rate than the lands belonging to the residents thereof. That no taxes shall be imposed by the State on the lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. And the debts and liabilities of this Territory shall be assumed and paid by the State of Idaho. That this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Idaho.

SEC. 20. That in behalf of the people of Idaho, we, in convention assembled, do adopt the Constitution of the United States.

Done in open convention, at Boisé City, in the Territory of Idaho, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

|                                   |                    |                    |
|-----------------------------------|--------------------|--------------------|
| WM H. CLAGETT, <i>President</i> . | H. O. HARKNESS.    | A. J. PINKHAM.     |
| GEO. AINSLIE.                     | FRANK HARRIS.      | J. W. POE.         |
| W. C. B. ALLEN.                   | SOL. HASBROUCK.    | THOS. PYEATT       |
| ROB'T ANDERSON.                   | C. M. HAYS.        | JAS. W. REID.      |
| H. ARMSTRONG.                     | W. B. HEYBURN.     | W. D. ROBBINS.     |
| ORLANDO B. BATTEN.                | JOHN HOGAN.        | WM. H. SAVIDGE.    |
| FRANK W. BEANE.                   | J. M. HOWE.        | AUG. M. SINNOTT.   |
| JAS. H. BEATTY.                   | E. S. JEWELL.      | JAMES M. SHOUP.    |
| J. W. BALLENTINE.                 | G. W. KING.        | DREN. W. STANDROD. |
| A. D. BEVAN.                      | H. B. KINPORT.     | FRANK STEUNENBERG. |
| HENRY B. BLAKE.                   | JAS. W. LAMOREAUX. | HOMER STULL.       |
| FREDERICK CAMPBELL.               | JOHN LEWIS.        | WILLIS SWEET.      |
| FRANK P. CAVANAH.                 | WM. C. MAXEY.      | SAM. F. TAYLOR.    |
| A. S. CHANEY.                     | A. E. MAYHEW.      | J. L. UNDERWOOD.   |
| CHAS. A. CLARK.                   | W. J. McCONNEL.    | LYCURGUS VINEYARD. |
| I. N. COSTON.                     | HENRY MELDER.      | J. S. WHITTON.     |
| JAS. I. CRUTCHER.                 | JOHN H. MYER.      | EDGAR WILSON.      |
| STEPHEN S. GLIDDEN.               | JOHN T. MORGAN.    | W. W. WOODS.       |
| JOHN S. GRAY.                     | A. B. MOSS.        | JOHN LEMP.         |
| WM. W. HAMMEL.                    | AARON F. PARKER.   | N. I. ANDREWS.     |
| H. S. HAMPTON.                    | A. J. PIERCE.      |                    |

I, Charles H. Reed, secretary of the Idaho constitutional convention, which convened at Boisé City on the 4th day of July, A. D. 1889, and adjourned on the 6th day of August, A. D. 1889, do hereby certify that the foregoing is a true and literal copy of the constitution for the State of Idaho, as formulated and adopted by said convention.

In witness whereof I have hereunto set my hand at Boisé City, Idaho Territory, this 2d day of December, A. D. 1889.

CHAS. H. REED,  
*Secretary of the Convention.*

#### UNITED STATES OF AMERICA.

#### TERRITORY OF IDAHO, *Executive Department:*

I, George L. Shoup, governor of the Territory of Idaho, do hereby certify that Charles H. Reed, whose signature is attached to the accompanying document, is the genuine signature of the said Charles H. Reed, who was the duly elected and qualified secretary of said convention during its session.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the Territory. Done at Boisé City, the capital of Idaho, this 2d day of December, A. D. 1889.

By the governor.  
[SEAL.]

GEO. L. SHOUP.  
E. J. CURTIS,  
*Secretary of Idaho.*



## APPENDIX B.

[Supreme Court of the United States. No. 1261.—October Term, 1889. Samuel D. Davis, appellant, vs. H. G. Beason, sheriff of Oneida County, Idaho Territory. Appeal from the Third Judicial District of the Territory of Idaho.]

## STATEMENT.

In April, 1889, the appellant, Samuel D. Davis, was indicted in the district court of the third judicial district of the Territory of Idaho, in the county of Oneida, in connection with divers persons named, and divers other persons whose names were unknown to the grand jury, for a conspiracy to unlawfully pervert and obstruct the due administration of the laws of the Territory, in this that they would unlawfully procure themselves to be admitted to registration as electors of said county of Oneida for the general election then next to occur in that county, when they were not entitled to be admitted to such registration, by appearing before the respective registrars of the election precincts in which they resided, and taking the oath prescribed by the statute of the State, in substance as follows:

"I do swear (or affirm) that I am a male citizen of the United States of the age of twenty-one years (or will be on the 6th day of November, 1888); that I have (or will have) actually resided in this Territory four months, and in this county for thirty days next preceding the day of the next ensuing election; that I have never been convicted of treason, felony, or bribery; that I am not registered or entitled to vote at any other place in this Territory; and I do further swear that I am not a bigamist or polygamist; that I am not a member of any order, organization, or association which teaches, advises, counsels, or encourages its members, devotees, or any other person to commit the crime of bigamy or polygamy, or any other crime defined by law as a duty arising or resulting from membership in such order, organization, or association, or which practices bigamy, polygamy, or plural or celestial marriage as a doctrinal rite of such organization; that I do not and will not, publicly or privately, or in any manner whatever, teach, advise, counsel, or encourage any person to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a religious duty or otherwise; that I do regard the Constitution of the United States and the laws thereof and the laws of this Territory, as interpreted by the courts, as the supreme laws of the land, the teachings of any order, organization, or association to the contrary notwithstanding, so help me God," when, in truth, each of the defendants was a member of an order, organization, and association, namely, the Church of Jesus Christ of Latter-Day Saints, commonly known as the Mormon Church, which they knew taught, advised, counseled, and encouraged its members and devotees to commit the crimes of bigamy and polygamy as duties arising and resulting from membership in said order, organization, and association, and which order, organization, and association, as they all knew, practiced bigamy and polygamy, and plural and celestial marriage as doctrinal rights of said organization; and that in pursuance of said conspiracy the said defendants went before the registrars of different precincts of the county (which are designated), and took and had administered to them respectively the oath aforesaid.

The defendants demurred to the indictment, and the demurrer being overruled they pleaded separately not guilty. On the trial which followed on the 12th of September, 1889, the jury found the defendant, Samuel D. Davis, guilty as charged in the indictment. The defendant was thereupon sentenced to pay a fine of \$500, and in default of its payment to be confined in the county jail of Oneida County for a term not exceeding two hundred and fifty days, and was remanded to the custody of the sheriff until the judgment should be satisfied.

Soon afterwards, on the same day, the defendant applied to the court, before which the trial was had, and obtained a writ of habeas corpus, alleging that he was imprisoned and restrained of his liberty by the sheriff of the county; that his imprisonment was by virtue of his conviction and the judgment mentioned and the warrant issued thereon; that such imprisonment was illegal; and that such illegality consisted in this: 1. That the facts in the indictment and record did not constitute a public offense, and the acts charged were not criminal or punishable under any statute or law of the Territory; and, 2. That so much of the statute of the Territory which provides that no person is entitled to register or vote at any election who is "a member of any

order, organization, or association which teaches, advises, counsels, or encourages its members, devotees, or any other person to commit the crime of bigamy or polygamy, or any other crime defined by law, as a duty arising or resulting from membership in such order, organization, or association, or which practices bigamy or polygamy, or plural or celestial marriage as a doctrinal rite of such organization" is a "law respecting an establishment of religion," in violation of the first amendment of the Constitution and void.

The court ordered the writ to issue, directed to the sheriff, returnable before it at 3 o'clock on the afternoon of that day, commanding the sheriff to have the body of the defendant before the court at the hour designated, with the time and cause of his imprisonment, and to do and receive what should then be considered concerning him. On the return of the writ the sheriff produced the body of the defendant and also the warrant of commitment under which he was held, and the record of the case showing his conviction for the conspiracy mentioned and the judgment thereon. To this return, the defendant admitting the facts stated therein, excepted to their sufficiency to justify his detention. The court holding that sufficient cause was not shown for the discharge of the defendant, ordered him to be remanded to the custody of the sheriff. From this judgment the defendant appealed to this court. (R. S., sec. 1909.)

[February 3, 1890.]

Mr. Justice FIELD, after stating the case, delivered the opinion of the court.

On this appeal our only inquiry is whether the district court of the Territory had jurisdiction of the offense charged in the indictment of which the defendant was found guilty. If it had jurisdiction, we can go no further. We can not look into any alleged errors in its rulings on the trial of the defendant. The writ of habeas corpus can not be turned into a writ of error to review the action of that court; nor can we inquire whether the evidence established the fact alleged, that the defendant was a member of an order or organization known as the Mormon Church, called the Church of Jesus Christ of Latter Day Saints, or the fact that the order or organization taught and counseled its members and devotees to commit the crimes of bigamy and polygamy as duties arising from membership therein.

On this hearing we can only consider whether, these allegations being taken as true, an offense was committed of which the Territorial court had jurisdiction to try the defendant. And on this point there can be no serious discussion or difference of opinion. Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They are crimes by the laws of the United States, and they are crimes by the laws of Idaho. They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to teach, advise and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal and proper subjects of punishment, as aiding and abetting crime are in all other cases.

The term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform, in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question. It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.

However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as



properly the subjects of punitive legislation. There have been sects which denied as a part of their religious tenets that there should be any marriage tie, and advocated promiscuous intercourse of the sexes as prompted by the passions of its members. And history discloses the fact that the necessity of human sacrifices, on special occasions, has been a tenet of many sects. Should a sect of either of these kinds ever find its way into this country, swift punishment would follow the carrying into effect of its doctrines, and no heed would be given to the pretence that, as religious beliefs, their supporters could be protected in their exercise by the Constitution of the United States. Probably never before in the history of this country has it been seriously contended that the whole punitive power of the government for acts, recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation, must be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance.

On this subject the observations of this court through the late Chief Justice Waite, in *Reynolds v. United States*, are pertinent. (98 U.S., 145, 165, 166.) In that case the defendant was indicted and convicted under section 5352 of the Revised Statutes, which declared that "every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than \$500, and by imprisonment for a term not more than five years." The case being brought here, the court, after referring to a law passed in December, 1783, by the State of Virginia, punishing bigamy and polygamy with death, said that from that day there never had been a time in any State of the Union when polygamy had not been an offense against society cognizable by the civil courts and punished with more or less severity; and added: "Marriage, while from its very nature a sacred obligation, is, nevertheless, in most civilized nations a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests." And, referring to the statute cited, he said: "It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they can not interfere with mere religious belief and opinions they may with practices.

Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." And in *Murphy v. Ramsey* (114 U.S., 15, 45), referring to the act of Congress excluding polygamists and bigamists from voting or holding office, the court speaking by Mr. Justice Matthews, said: "Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. And to this end no means are more directly and immediately suitable than those provided by this act, which endeavors to withdraw all political influence from those who are practically hostile to its attainment."

It is assumed by counsel of the petitioner, that because no mode of worship can be established or religious tenets enforced in this country, therefore any form of worship may be followed and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practicing them. But nothing is further from the truth. Whilst legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated. Crime is not



the less odious because sanctioned by what any particular sect may designate as religion.

It only remains to refer to the laws which authorized the legislature of the Territory of Idaho to prescribe the qualifications of voters and the oath they were required to take. The Revised Statutes provide that "the legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents." (R. S. sec. 1851.)

Under this general authority it would seem that the Territorial legislature was authorized to prescribe any qualifications for voters calculated to secure obedience to its laws. But, in addition to the above law, section 1859 of the Revised Statutes provides that "every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein, subject, nevertheless, to the limitations specified in the next section," namely, that at all elections in any Territory subsequently organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and for holding office shall be such as may be prescribed by the legislative assembly of each Territory, subject, nevertheless, to the following restrictions:

First. That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one or persons above that age who have declared their intention to become such citizens;

Second. That the elective franchise or the right of holding office shall not be denied to any citizen on account of race, color, or previous condition of servitude;

Third. That no soldier or sailor or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote unless he has made his permanent domicile in the Territory for six months; and

Fourth. That no person belonging to the Army or Navy shall be elected to hold a civil office or appointment in the Territory.

These limitations are the only ones placed upon the authority of Territorial legislatures against granting the right of suffrage or of holding office. They have the power, therefore, to prescribe any reasonable qualifications of voters and for holding office not inconsistent with the above limitations. In our judgment, section 509 of the Revised Statutes of Idaho Territory, which provides that "no person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery in this Territory, or in any other State or Territory in the Union, unless restored to civil rights; nor any person who is a bigamist or polygamist or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization, or association which teaches, advises, counsels, or encourages its members or devotees, or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, association, or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust, or profit within this Territory," is not open to any constitutional or legal objection. With the exception of persons under guardianship or of unsound mind, it simply excludes from the privilege of voting or of holding any office of honor, trust, or profit, those who have been convicted of certain offenses, and those who advocate a practical resistance to the laws of the Territory and justify and approve the commission of crimes forbidden by it. The second subdivision of section 504 of the Revised Statutes of Idaho, requiring every person desiring to have his name registered as a voter to take an oath that he does not belong to an order that advises a disregard of the criminal law of the Territory, is not open to any valid legal objection to which our attention has been called.

The position that Congress has, by its statute, covered the whole subject of punitive legislation against bigamy and polygamy, leaving nothing for Territorial action on the subject, does not impress us as entitled to much weight. The statute of Congress of March 22, 1882, amending a previous section of the Revised Statutes in reference to bigamy, declares "that no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States." (22 Stat. 31.)

This is a general law applicable to all Territories and other places under the exclusive jurisdiction of the United States. It does not purport to restrict the legisla-



tion of the Territories over kindred offenses or over the means for their ascertainment and prevention. The cases in which the legislation of Congress will supersede the legislation of a State or Territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both. There the action of Congress may well be considered as covering the entire ground. But here there is nothing of this kind. The act of Congress does not touch upon teaching, advising and counseling the practice of bigamy and polygamy, that is, upon aiding and abetting in the commission of those crimes, nor upon the mode adopted, by means of the oath required for registration, to prevent persons from being enabled by their votes to defeat the criminal laws of the country.

The judgment of the court below is therefore affirmed.

NOTE.—The constitutions of several States, in providing for religious freedom, have declared expressly that such freedom shall not be construed to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State. Thus, the constitution of New York of 1777 provided as follows: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: *Provided*, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State." (Art. XXXVIII.) The same declaration is repeated in the constitution of 1821 (Art. VII, sec. 3) and in that of 1846 (Art. I, sec. 3), except that for the words "hereby granted," the words "hereby secured" are substituted. The constitutions of California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Minnesota, Mississippi, Missouri, Nevada, and South Carolina contain a similar declaration.]

True copy.

Test:

JAMES H. MCKENNEY,  
*Clerk Supreme Court, U. S.*





## ADMISSION OF IDAHO INTO THE UNION.

---

Mr. MANSUR submitted the following as the

### VIEWS OF THE MINORITY:

[On the bill (H. R. 4562) "to provide for the admission into the Union of the State of Idaho, and for other purposes."]

The minority find themselves unable to agree with the majority in relation to one of the provisions of the proposed constitution for Idaho.

The particular provision which is the subject of this disagreement is the one relating to the right of suffrage, the right to hold office, and the right to serve on juries; to which reference will hereinafter be more specifically made.

The precise point of difference between the majority and the minority is this: That the majority assent to and approve of a provision which deprives a citizen of the right of suffrage, disqualifies him from holding office, and prevents him from serving on juries, for criminal conduct imputed to him when he has not been convicted of such criminal conduct; while the minority insist that no citizen, being otherwise qualified should be deprived of these rights and privileges on account of alleged crime, unless he has been convicted of such crime by some court of competent jurisdiction, and where the penalty for such crime, or a part thereof, is such disqualification.

This is the precise point of difference; and the question, therefore, that is presented, stated in another form, is this:

Should a citizen be deprived of these inestimable qualities of citizenship because of crime, when he has not been convicted of that crime.

The majority approve of a provision of this constitution which thus disables a citizen, without his first being convicted; while the minority insist that no citizen should be thus disqualified for such reasons unless the party has been convicted in due form of law.

It is perhaps unfortunate, in this particular case, that this difference arises out of the fact that the offenses for which it is proposed to disqualify a citizen without his having been thus convicted are the offenses of bigamy and polygamy, and the aiding or encouraging the commission of those offenses. If it related to any other offenses that are *mala in se*, such as murder, arson, burglary, larceny, there would be no difficulty in this discussion; indeed, the dispute would not exist, because not even the majority would insist that citizens, who were charged with such offenses should be thus disqualified until they had been first duly convicted of such offenses.

The embarrassment in the discussion rests simply in the fact that these offenses of bigamy and polygamy, and the commission of these offenses, arise from and are associated with the Mormon Church and

the Mormon religion, practices which are reprehended by public opinion, and which are not justified by the minority.

On the contrary thereof, the minority at the outset of this presentation of our views desire it to be distinctly understood that this opposition is not based in any degree upon any purpose to screen persons who are guilty of bigamy or polygamy, or in any way to tolerate the commission of any such offenses, or the aiding or abetting, counseling or advising the commission of any such offenses.

The opposition is based exclusively upon the proposition that it is contrary to the fundamental principles of free government to disfranchise a citizen without his having an opportunity to be heard in court, and to defend himself against a charge of having committed such offenses; or of having aided and abetted others in the commission of such offenses. In short, it is an opposition solely to the incorporation into any State constitution of a provision which disfranchises a man for crime until the fact that he has been guilty of such crime has been ascertained by a judgment of a court of competent jurisdiction.

Having thus stated the ground of this opposition, we now proceed to consider whether or not any citizen should be disfranchised for a crime alleged to have been committed by him until he has been duly convicted.

The minority say *no*, the majority say *yes*.

In a free government, a government by the people, the right of suffrage is of inestimable value. In fact, a government by the people rests essentially upon the right of the citizens to vote. Indeed, this is the only method by which government by the people can be accomplished. It is the choice by the people of the men who make the laws and who execute the laws that constitute free government.

Alexander Hamilton said (quoted in 4 Wall., 291):

A share in the sovereignty of the state, which is exercised by the citizens at large in voting at the elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist as a free people, and it will certainly therefore never be admitted that less ceremony ought to be used in divesting any citizen of that right than in depriving him of his property.

No more apt words could be used expressive of the great value to the citizen and the importance to free government of the right of suffrage.

In the constitution of no State of this Union can a provision be found wherein any citizen is disfranchised and rendered incapable of holding office and serving on juries because of any crime alleged against him, until he has been convicted of that crime.

And in support of this assertion we now quote from the several State constitutions as follows:

#### Alabama, 1875:

SEC. 3. The following classes shall not be permitted to register, vote, or hold office:

(1) Those who shall have been *convicted* of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.

(2) Those who are idiots or insane.

#### Arkansas, 1874:

SEC. 5. No idiot or insane person shall be entitled to the privileges of an elector.

SEC. 6. Any person who shall be *convicted* of fraud, bribery, or other willful and corrupt violation of any election law of this State, shall be adjudged guilty of a felony and disqualified from holding any office of trust or profit in this State.

#### California, 1849:

SEC. 5. No idiot or insane person or person *convicted* of any infamous crime shall be entitled to the privileges of an elector.



## Colorado, 1876:

SEC. 10. No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall, without further action, be invested with all the rights of citizenship, as otherwise provided in this constitution.

SEC. 4. No person hereafter *convicted* of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this State.

## Connecticut, 1818:

SEC. 3. The privileges of an elector shall be forfeited by a *conviction* of bribery, forgery, perjury, dueling, fraudulent bankruptcy, theft, or other offense, for which an infamous punishment is inflicted.

## Delaware, 1831:

SEC. 3. All elections shall be free and equal.

SEC. 4. Trial by jury shall be as heretofore.

## Florida, 1868:

SEC. 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person *convicted* of felony be qualified to vote at any election unless restored to civil rights.

## Georgia, 1868:

SEC. 3. No person *convicted* of felony or larceny before any court of this State, or of or in the United States, shall be eligible to any office or appointment of honor or trust within this State, unless he shall have been pardoned.

SEC. 6. The general assembly may provide, from time to time, for the registration of all electors; but the following classes of persons shall not be permitted to register, vote, or hold office: 1st. Those who shall have been *convicted* of treason, embezzlement of public funds, malfeasance in office, crime punishable by law with imprisonment in the penitentiary, or bribery; 2d. Idiots or insane persons.

## Illinois, 1870:

SEC. 7. The general assembly shall pass laws excluding from the right of suffrage persons *convicted* of infamous crimes.

## Indiana, 1851:

SEC. 8. The general assembly shall have power to deprive of the right of suffrage and to render ineligible any person *convicted* of an infamous crime.

## Iowa, 1857:

SEC. 5. No idiot or insane person, or persons *convicted* of any infamous crime, shall be entitled to the privilege of an elector.

## Kansas, 1859:

SEC. 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote; nor any person *convicted* of treason or felony, unless restored to civil rights.

## Kentucky, 1850:

SEC. 7. That all elections shall be free and equal.

SEC. 3. Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected who shall be *convicted* of having given or offered any bribe or treat to procure his election.

SEC. 4. Laws shall be made to exclude from office and from suffrage those who shall thereafter be *convicted* of bribery, perjury, forgery, or other crimes or high misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influences thereon from power, bribery, tumult, or other improper practices.

## Louisiana, 1868:

ART. 99. The following persons shall be prohibited from voting and holding any office: All persons who shall have been *convicted* of treason, perjury, forgery, bribery, or other crime punishable in the penitentiary, and persons under interdiction.

## Maine (amendment), 1876:

The legislature may enact laws excluding from the right of suffrage, for a term not exceeding ten years, all persons *convicted* of bribery at any election, or of voting at any election under the influence of a bribe.

## Maryland, 1867 :

SEC. 2. No person above the age of twenty-one years, *convicted* of larceny, or other infamous crime, unless pardoned by the governor, shall ever thereafter be entitled to vote at any election in this State; and no person under guardianship as a lunatic, or as a person *non compos mentis*, shall be entitled to vote.

## Massachusetts, 1780 :

ART. IX. All elections ought to be free, and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers and to be elected for public employments.

ART. XXV. No subject ought in any case or in any time to be declared *guilty of treason or felony by the legislature*.

ART. IV. Every male person being twenty-one years of age, and resident in any particular town in this commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of 3 pounds, or any estate of the value of 60 pounds shall have a right to vote in the choice of a representative or representatives for the said town.

## Michigan, 1850 :

SEC. 6. Laws may be passed to preserve the purity of elections, and guard against abuses of the elective franchise.

## Minnesota, 1857 :

SEC. 2. No person who has been *convicted* of treason or any felony, unless restored to civil rights, and no person under guardianship, or who may be *non compos mentis* or insane, shall be entitled or permitted to vote at any election in this State

## Mississippi, 1868 :

SEC. 2. No person shall be deprived of life, liberty, or property, *except by due process of law*.

SEC. 2. All male inhabitants of this State, except idiots and insane persons, and Indians not taxed, citizens of the United States or naturalized, twenty-one years old and upwards, who have resided in this State six months and in the county one month next preceding the day of election at which said inhabitant offers to vote, and who are duly registered according to the requirements of section 3 of this article, and *who are not disqualified by reason of any crime*, are declared to be qualified electors.

## Missouri, 1875 :

SEC. 10. The general assembly may enact laws excluding from the right of voting all persons *convicted* of felony or other infamous crime, or misdemeanors connected with the exercise of the right of suffrage.

## Nebraska, 1875 :

SEC. 2. No person shall be qualified to vote who is *non compos mentis*, or who has been *convicted* of treason or felony under the law of the State, or of the United States, unless restored to civil rights.

## Nevada, 1864 :

No person who has been, or may be *convicted* of treason or felony in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person shall be entitled to the privilege of an elector.

## New Hampshire, 1792 :

Every male inhabitant of each town and parish with town privileges, and places unincorporated, in this State, of twenty-one years of age and upward, excepting paupers and persons excused from paying taxes at their own request, shall have a right, at the annual or other meeting of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells for the senator in the district whereof he is a member.

SEC. 96. No person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under this Government, who, in the due course of law, has been *convicted* of bribery or corruption in obtaining an election or appointment.

## New Jersey, 1876 :

Two. The legislature may pass laws to deprive persons of the right of suffrage who shall be *convicted* of bribery at elections.



## New York, 1846 :

The legislature, at the session thereof next after the adoption of this section, shall, and from time to time thereafter may, enact laws excluding from the right of suffrage all persons *convicted* of bribery or of any infamous crime.

## North Carolina, 1876 :

But no person who, upon *conviction* or confession in open court, shall be adjudged guilty of felony, or of any other crime infamous by the laws of this State, and hereafter committed, shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

## Ohio, 1851 :

SEC. 4. The general assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person *convicted* of bribery, perjury, or otherwise infamous crime.

## Oregon, 1857 :

SEC. 3. No idiot or insane person shall be entitled to the privileges of an elector; and the privilege of an elector shall be forfeited by a *conviction* of any crime which is punishable by imprisonment in the penitentiary.

SEC. 6. No Negro, Chinaman, or Mulatto shall have the right of suffrage.

## Pennsylvania, 1873 :

SEC. 9. Any person who shall, while a candidate for office, be guilty of bribery, fraud, or willful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this commonwealth; and any person *convicted* of willful violation of the election laws shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years.

## Rhode Island, 1842 :

Nor shall any person *convicted* of bribery, or of any crime deemed infamous at common law, be permitted to exercise that privilege until he be expressly restored thereto by act of the general assembly.

## South Carolina, 1868 :

SEC. 8. The general assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, robbery, or duelling, *whereof the persons shall have been duly tried and convicted*.

## Tennessee, 1870 :

SEC. 2. Laws may be passed excluding from the right of suffrage persons who may be *convicted* of infamous crimes.

SEC. 3. Any elector who shall receive any gift or reward for his vote, in meat, drink, money, or otherwise, *shall suffer such punishment as the law shall direct*. And any person who shall directly or indirectly give, promise, or bestow any such reward to be elected shall thereby be rendered incapable, for six years, to serve in the office for which he was elected, and be subject to such further punishment as the legislature shall direct.

## Texas, 1876 :

SEC. 1. The following classes of persons shall not be allowed to vote in this State, to wit :

First. Persons under twenty-one years of age.

Second. Idiots and lunatics.

Third. All paupers supported by the county.

Fourth. All persons *convicted* of any felony, subject to such exceptions as the legislature may make.

## Vermont, 1793 :

ART. VIII. That all elections ought to be free and without corruption, and that all freemen, having a sufficient evidence, common interest with, and attachment to, the community have a right to elect officers and be elected into office, agreeably to the regulations made in this constitution.

## Virginia, 1870 :

That the following persons shall be excluded from voting :

First. Idiots and lunatics.

Second. Persons *convicted* of bribery in any election, embezzlement of public funds, treason, felony, or petit larceny.

Third. No person who, while a citizen of this State, has since the adoption of this constitution fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to vote or hold any office of honor, profit, or trust under this constitution.

#### West Virginia, 1872:

The male citizens of this State shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under *conviction* of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for sixty days next preceding such offer, shall be permitted to vote while such disability continues.

#### Wisconsin, 1848:

SEC. 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person *convicted* of treason or felony be qualified to vote at any election unless restored to civil rights.

It thus appears that for the first time in American history, save one, the effort is made to depart from this principle for which the minority is now contending. The exception referred to is in the case of the constitution of the State of Missouri, adopted July 4, 1865. But in the case of Cummings the Supreme Court of the United States held that provision to be unconstitutional.

We now proceed to bring the attention of the House to the particular provisions of the constitution to which we are objecting, and in that connection to show that this constitution is inconsistent with itself, and that it is discriminating in its character, and that it requires even in case of offenses *mala in se*, *conviction* as a condition precedent to disfranchisement; whereas in the case of those other offenses, bigamy and polygamy, it does not require that a party shall be *convicted*, but he may be disfranchised *without* such *conviction*.

This will be seen from the following quotation from Article VI, section 3.

No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has at any place been *convicted* of treason, felony, embezzlement of public funds, bartering or selling or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the right of citizenship, or who at the time of such election is confined in prison on *conviction* of a criminal offense.

Thus far this provision requires *conviction* in order to disfranchise or disqualify from holding office or serving on juries.

Then comes the further provision:

Or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural, or celestial marriage, or in violation of any law of this State, or of the United States, forbidding any such crime; or who in any manner teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of, any order, organization, association, corporation, or society, which teaches, advises, counsels, or encourages or aids any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, or which teaches or advises that the laws of this State prescribing rules of civil conduct are not the supreme law of the State; nor shall Chinese nor persons of Mongolian descent not born in the United States, nor Indians not taxed who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office.

As to all of this, this constitution does not require *conviction* as a precedent to disqualification, and therefore the determination of the question as to whether the party is a bigamist or a polygamist, or has aided and abetted in the commission of these offenses, must be either



by the registering officer or by some election board. But no matter in what way it is to be determined, it prohibits the exercise of these fundamental rights and privileges of an American citizen where the party *has not been convicted*; while, by the same article of the constitution it, allows every man who is accused of every other crime to exercise these rights and privileges until he has actually been convicted.

The minority, while reprehending, as much as any of the majority can reprehend, the offenses of bigamy and polygamy, and the aiding and abetting of such offenses, most respectfully submit to the House that a man who is accused of bigamy is as much entitled to a trial for that offense as is a man who is charged with any other offense, murder, arson, larceny, etc.; that a man who is accused of belonging to an association that encourages these offenses is entitled to have a trial as to such accusation. A man who is accused of aiding and abetting the offense of bigamy and polygamy, as an American citizen ought to have the right to have his guilt of that offense, if it is ever made an offense, determined by a jury according to the forms of law.

And the minority further submit that it is impossible, upon any justifiable principle, to make the distinction that is here made between these offenses *mala in se* and these other offenses which are only *mala prohibita*.

It must be conceded that the making of such discrimination is an arbitrary exercise of power, and it seems to us that it must also be conceded that it will be very difficult to find any reason to justify such arbitrary exercise of power.

It certainly is difficult to give a reason why it should be required that a man should be convicted of murder as a prerequisite to disfranchisement, and that his neighbor should not be convicted of aiding and abetting polygamy as a condition precedent to such disfranchisement.

We submit that there is nothing that can be suggested that will stand the test of reason that would justify such a discrimination. While these disqualifications may not be punishment in the sense of being penal, they are nevertheless punishment of the severest character in that it is a deprivation of those privileges to the citizen, which are the basis of free government. The citizen *is branded as a criminal in fact*, although he has never been *convicted* of any crime. Such punishment without trial, without the opportunity to defend, is contrary to all our ideas of justice.

Let us consider the question of suffrage and its value remembering that in this argument your minority are taking ground solely and arguing against the provisions cited, because of the fact they seek to disfranchise a citizen, and deprive him of his liberties and franchises, which, in the eye of every American, should be more precious than life itself, without an existing law declaring the crime and affixing the penalty to be followed by due process of law in a court of competent jurisdiction, wherein the accused shall be *convicted* by due judgment of said court.

Under section 4 the legislature may at once invest the registrar, or the judge of election, with all the qualities, power, and authority of a drum-head court-martial, to investigate, try, and determine whether any citizen who shall make application to vote at any election in the State of Idaho, and he may determine not alone the law but the facts of the case, and this against the strenuous protest and denial of the party accused of any of the heinous practices set forth in section 3, even when supported by his honest oath in denial of the fact that he does not believe or practice the doctrines, or any of them, stated therein.

It is very evident that the people who can put such a clause in their constitution and make it, as far as they can, irrevocable in character, are so prejudiced and determined in their opposition, if not hatred, of all those against whom the thunders of this section are promulgated, as to make them and especially their officers to whom they intrust the execution of the provisions of said section, utterly incapable of doing anything like even-handed justice toward those whom they suspect or accuse of being within the prohibitions of said section.

It can not be possible that the people of the United States in the closing years of the nineteenth century, and when we are celebrating the hundredth centennial of the assembling of the American Congress, the great conservator and protector of our American liberties, will permit such a clause to stand in the constitution of a new State seeking admission into the Union.

The enjoyment of life and liberty are the chief of the rights and privileges which appertain to the citizen of a free State. His liberties and franchises, his rights as a citizen, his place in the Commonwealth, these are what give grace to his existence and make his condition more favorable than that of a subject of a despotism. Take away this and you will reduce him to that degraded rank. If it be said that they are not taken away by section 3, then the answer is to quote its provisions. It is not denied that it does effect this; on the contrary, it is expressly admitted that its objects are to deprive the Mormon male voters of these privileges.

But it is said that the things taken away are mere political rights, which the State may give, withhold, or reclaim at pleasure; that a man can have no property in such things, and that for the abrogation of them he could have no remedy in the courts of law.

We answer, that to be deprived of these things or any of them is, in effect, a heavy punishment; that not to have them is not to be free, and that when they are taken away from him who once possessed them, that person is degraded and punished by the deprivation.

If the constitution of Idaho shall be ratified by Congress, and the State admitted under said constitution, so far as section 3 is concerned, an apt illustration of its enforcement may be drawn from Holy Scriptures, in this: that the Centurian ordered Paul to be seized and loaded with chains; and then the Centurian inquired of Paul who he was, and what he had done.

First rob the citizen of his liberty, and deprive him of his inestimable rights, and leave him afterward to obtain, if possible, partial reparation for the outrage inflicted upon him, by depriving him of that badge of his freedom, the right of suffrage, on the day of election.

Your minority call attention to this extract from the argument of Hon. Samuel T. Glover in *Blair vs. Ridgely et al.* (41 Mo., 71):

In Smith's Commentaries, page 62, it is stated:

"It will be at once concluded that no man should be stripped of a valuable property—perhaps his all—be disfranchised, or consigned to public ignominy and reproach, unless it be clear that such high penalties have been annexed to the act he has committed."

If we look for a moment at the nature of the liberty or suffrage taken away by these sections, you will see that the disability imposed, the dishonor inflicted, could not well be greater. We value life, liberty, and property, and all these it is admitted ought to be secured by constitutional guaranties; but the greatest among our liberties is suffrage. It is suffrage which protects property and life and all our other liberties.

Mr. Madison, in 1785, writing to John Brown, of Kentucky, urged upon him that the legislature should not be allowed to abridge the right of suffrage (1 Madison's Writings, 178). "It is that right (said Alexander Hamilton) by which we exist as



a free people" (3 Hist. Repub. U. S.; 24). How much of blood and treasure has not been sacrificed to obtain it? When will men who know and appreciate liberty cease to value it above fortune and even life? The supreme court of Pennsylvania say: "The most important of all our franchises is the right of an elector and citizen. It is true that, in a confined sense, it can not be called property; it is not assets to pay debts, nor does it descend to the heir or administrator; but who does not feel its value? And who would not turn pale if he thought he could be deprived of it, without a hearing or trial, by an act of assembly?" The court speak of the right of an elector as a franchise; but by all authorities, English and American, "liberty" and "franchise" are synonymous terms (4 Tom. Jac. Law Dic., 148; 2 Black., 21-37). The right of the people to elect officers is a franchise (2 Bouv. Dic., 1593). In Mr. Webster's argument, Dartmouth College case (5 Webster's Works, 479-481), he said, "Liberties and franchises are the same."

\* \* \* \* \*

"It can not be necessary to say much in refutation of the idea that there can not be a legal interest or ownership in anything which does not yield a pecuniary benefit, as if the law regarded no rights but rights of money and visible tangible property. Of what nature are all rights of suffrage? No elector has a particular personal interest, but each has a legal right, to be exercised at his own discretion, and it can not be taken away from him. Consequences of the utmost magnitude may sometimes depend on the exercise of the right of suffrage by one or a few electors. Nobody was ever yet heard to contend, however, that for that account the public may take away the right or impair it."

Mr. Madison held that the citizen had not only a right to his property, but a property in all his rights (4 Writings of Madison, 478-480). When, under the English common and statute law, one was made a citizen of London or other city, or free burgess of any town corporate, "he had a freehold in his freedom during life" (2 Tom. Jac. Law Dic., 378). Can it be possible that in America the liberty of suffrage is less secure than it is under the rule of lords and kings? Is it true that while an acre of land or \$50 in money is protected by a jury trial the liberty of suffrage is not?

Also this further extract from Mr. Glover's argument in *Blair vs. Ridgely et al.*, 41 Missouri, 121:

In the case of *Ashby vs. White* and others (Lord Raymond's Reps., 938), after verdict for the plaintiff, the judgment was arrested in the court of the Queen's Bench by Justice Gould, Powys, and Powell. The action was brought against the returning officers (who fill the same place in England that judges of election fill in this country) for refusing to receive the vote of the plaintiff. This case is a most interesting one.

Gould, Justice, was of opinion that the action was not maintainable; first, because the returning officers were judges of the qualification of voters; second, because the plaintiff's privilege of voting is not a matter of property or credit, so that the hinderance of it is merely *damnum absque injuria*. \* \* \*

Justice Powell and Powys concurred mainly on the last point. Lord Holt dissented.

"It is not to be doubted," he said, "but that the commons of England have a great and considerable share in the Government and a share in the legislature, without whom no law passes; but because of their vast numbers this right is not exercisable by them in their proper persons, and, therefore, by the constitution of England it has been directed that it should be exercised by representatives chosen by and out of themselves, and this representation is exercised in three different qualities, either as knights of shire, citizens of cities, or burgesses of boroughs; and these are the persons entitled to represent all the commons of England. The election of knights belongs to the freeholders of the county, and it is an original right vested in an inseparable form from the freehold, and can be no more severed from the freehold than the freehold itself can be taken away." \* \* \* "The right of election is an original right incident to and inseparable from the freehold. As for citizens and burgesses, they depend on the same rights as knights of shire, and differ only as to the tenure, but the right and the manner of their election is on the same foundation."

After examining the various tenures of the different cities and boroughs, he proceeds: "Hence it appears that any man that is to give his vote on the election of members to serve in Parliament, has a several and particular right in his private capacity as a citizen or burgess; and, surely, it can not be said that this is so inconsiderable a right as to apply that maxim to it, *de minimis non curat lex*; a right that a man has to give his vote at the election of a person to represent him in Parliament, there to concur in the making of laws which are to bind his liberty and property is a most transcendent thing and of a high nature, and the law takes notice of it as such in several statutes." \* \* \* "The right of voting at the election of burgesses is a thing of the highest importance, and so great a privilege that it is a great injury

to deprive the plaintiff of it." \* \* \* "But my brother says we can not judge of this matter because it is a Parliamentary thing. Oh! by all means, be very tender of that." \* \* \* "To allow this action will make public officers more careful to observe the constitution of cities and boroughs, and not to be so partial as they commonly are in all elections, which is indeed a great and growing mischief, and tends to the prejudice of the peace of the nation" \* \* \* "If it be a matter within our jurisdiction, we are bound by our oaths to judge of it. This is a matter of property determinable before us."

Such was the opinion of Lord Holt. He was overruled by the three associate judges, but most fortunately a writ of error was taken to the House of Lords, and the judgment of the court of king's bench was reversed by the vote of fifty lords to sixteen. Trevor, chief-justice of the common pleas, and Baron Price, of the exchequer, were of opinion with the three judges of the king's bench. Ward, chief baron of the exchequer, with his associates, Bury and Smith, agreed with the Lord Chief-Justice Holt. Tracy, justice, agreed with Holt on the main point, but differed on a point of pleading.

When this case was argued in the House of Lords, Holt, chief-justice, said addressing those in favor of affirming the judgment: "The plaintiff has a particular right vested in him to vote. Is it not then a wrong and an injury to that right to refuse to receive his vote? \* \* \* This action is brought by the plaintiff for the infringement of his franchise. You would have nothing to be a damage but what is pecuniary. \* \* \* Let all people come in and vote fairly. It is to support one or the other party to deny any man's vote. By my consent—if such an action comes to be tried before me, I will direct the jury to make him (the defendant) pay well for it. It is denying him his English right; and if this action be not allowed, a man may be forever deprived of it. *It is a great privilege to choose such persons as are to bind a man's life and property by the laws they make.*"

This case is cited at length in order to combat the notion that the right of suffrage is of slight estimation in the eye of the law, and is not regarded as being of the sacredness that hedges and protects tangible, real and personal property. This was the opinion of Gould, Powell, and Powys, justices of the king's bench (or rather of the queen's bench, for the cause was originally tried in the second year of Queen Anne). But the opinion of Holt to the contrary, was supported by a majority of the judges of the three courts and by more than three-fourths of the House of Lords.

Whoever is disposed to make light of this case as an authority for the only proposition in support of which it is cited, viz, that the right of suffrage is eminently a thing belonging to a free American man—that it is his property, something which is his own, the infringement of which debases and degrades him, and is a deprivation of that which makes the principal dignity of his condition—must be prepared to maintain these propositions also, viz:

(1) That the freedom of an American citizen rests on a less assured basis than that of an Englishman.

(2) That popular rights are of less weight in a popular government than in an oligarchical.

(3) That the right of suffrage, if possessed by a man in virtue of being a freeholder or a member of a borough in England, is more inviolable than if it be held as an incident of free citizenship of such a State as Idaho may become or as New York is.

If these things be true, the authority of the case just cited is unquestionably very much shaken. If they are not true, it is not perceived how it can be denied that a man's political franchises are as inviolable as his purse or person.

Clause 3 of section 1, article 3, of the Federal Constitution, reads as follows:

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed.

It must be evident to all that the deprivations put upon all citizens obnoxious to the provisions of said section 3, are because the framers of that constitution looked upon the offenses therein stated to be *crimes* against the welfare of the State and society.

From that stand-point can it not well be said, in the absence of decisions of our Supreme Court construing the meaning of this section, that it will be applicable to control and overrule the provisions of said section 3 in this, that if, by common consent of all dispassionate and unprejudiced people, the offenses therein set forth are crimes, then it follows that before any one can be punished for those crimes, or held responsible for them in anywise, there must have been an indictment



and presentation for any one or more of them committed, in a court of competent jurisdiction, wherein the case shall be tried by *the aid of a jury*.

Is it possible, or can it be, that the American Congress will permit a State to come in with such an arbitrary and wholesale disfranchisement of citizens who now possess these rights, sought to be taken away by the imposition of this constitution upon them? For it must be admitted that if it shall be adopted in its present form the individuals struck at, to wit, twenty-five thousand citizens who are now in the enjoyment of the rights and franchises of suffrage, of holding office, and of serving upon juries, functions belonging to them as free citizens, will then possess them no longer.

In the case of *Davis vs. Beeson* the Supreme Court has decided that a law of the Territory of Idaho which requires a voter to take an oath that he is not a bigamist or polygamist, or has not aided or abetted the commission of these offenses, is not unconstitutional; and upon precisely the same principle a law that required a citizen to take an oath that he had not been guilty of any other offense (for example murder), would not be unconstitutional. We are not contending that such a law would be unconstitutional, nor are we contending that if this proposed constitution of Idaho contained such a test oath it would violate the Constitution of the United States.

If this constitution contained a provision that the citizen should make oath that he had not committed or aided the commission of polygamy or bigamy when required to do so, and that upon the taking of such oath he should be permitted to vote, a very different situation would be presented. In such case he would exercise the privileges of citizenship and he would incur the responsibilities incident to perjury if he made a false oath. But this proposed constitution makes no provision by which, although accused, he can deny under oath, the accusation is false, and therefore of necessity he is subject to the will or judgment of the election officers from whose action he has no appeal and by whose action he is deprived of the right of suffrage. This makes it all the more manifest that if accused of these offenses *conviction* should be the test of disqualification, just as it is in case of all other offenses.

The vice of this provision of this constitution is best illustrated by that portion which makes a man accused of polygamy incompetent to serve on a jury.

Suppose he is called and challenged on the ground that he has aided and abetted polygamy; this constitution says that if he has so aided and abetted he shall not serve. He has never been convicted of any such offense, and he denies that he has ever been guilty of it. As this provision now stands the court as a side issue must proceed to try that question in some form; must proceed to ascertain in some way whether he has been guilty of that offense; if it be claimed that he belongs to an organization that teaches polygamy evidence must be produced that he belongs to such an organization, and also as to what in fact it does teach; and thus the court in the organization of a jury may be compelled to enter upon many such trials. This is not an imaginary result. It is an obvious one, and it intensely emphasizes the force of the objection we are urging, viz., that *conviction* for an offense should be a prerequisite to disqualifying.

And it may be further illustrated by the disqualification to hold office

Suppose a citizen is elected to an office and when he proceeds to take the oath of office the objection is made that he is a polygamist, or has

aided or abetted the commission of that offense. The constitution says that he is disqualified if he has so aided. Is he to be tried before he can take the oath, and if so, how and by whom?

If it is conceded that methods civil and criminal could be devised by which his eligibility could be determined after election, the very necessity to resort to such proceedings, with all the evils that arise from such complications, gives additional force to our proposition that *conviction* should be the test of disqualification.

Your minority have not overlooked sections 4 and 8 of the bill of rights of the proposed constitution of Idaho.

They are as follows :

SEC. 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed ; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions ; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State ; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise, any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent ; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the State, and the legislature shall provide by law for the punishment of such crimes.

SEC. 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger : *Provided*, That a grand jury may be summoned upon the order of the district court in the manner provided by law : *And provided further*, That after a charge has been ignored by a grand jury, no person shall be held to answer or for trial therefor upon information of the public prosecutor.

Let it be noted that by the provisions of section 8—

“ No person shall be held to answer for any *felony* or criminal offense of any grade, unless on presentment or indictment of a grand jury,” etc.

And again, in section 4, that the—

“ Legislature shall by law provide for the *punishment* of bigamy and polygamy.”

If we consider all the provisions cited herein from said constitution *together* relative to these offenses, it is evident that the framers of the constitution did not consider *disfranchisement*, or deprivation of the right to sit on a jury, or to hold office, *punishment*, but looked upon it only as a *degradation*. Your minority can not assent to this. We think we have shown conclusively it is punishment, and of a severe character. In fact, by the constitution of every State in the Union it is *punishment*, and that so severe that it is only inflicted upon such citizens as have been *convicted* of heinous felonies, or such offenses as sap the fountains of justice, or such election offenses as deprive all other citizens of that certainty in the selection of their rulers and officers necessary to secure an abiding faith in such fact, and therefore requisite to secure the public peace and prosperity. And, as already shown, they are never imposed by any existing State constitution until after conviction, and are then added to emphasize the other punishment attached to the offense.

These considerations show conclusively that the deprivations imposed by the proposed constitution of Idaho are essentially punishment, and can be nothing else.

We insist, therefore, that when Idaho is admitted it shall not be with a provision in the constitution which deprives a citizen of the right of



suffrage, of the right to serve on juries and to hold office, because of alleged crime of which the party has not been convicted. We insist that these disqualifications shall only result from a conviction of crime, and we present with this report an amendment, appended hereto, the adoption of which we recommend.

What is thus recommended is likewise fully sustained by precedent. The enabling acts for Ohio, Wisconsin, Minnesota, Oregon, Nevada, Louisiana, and Nebraska, and others, contained provisions prescribing conditions precedent to admission, which need not here be specified.

Nebraska is a conspicuous illustration. The act of Congress in that case was passed February 9, 1867, 14 Statutes at Large, 391, 392.

Nebraska was not permitted to become a State until the constitution offered was so changed that suffrage should not be restricted to white persons, and *irrevocable* provision to that effect was made.

And so here we insist that in like manner Idaho should not be admitted until the provision is eliminated from the proposed constitution by which citizens who have not been convicted of alleged crime are disfranchised without *conviction*.

The convention which framed the constitution under which it is proposed to admit the Territory of Idaho into the Union as a State had no legal sanction for its existence. The governor, without authority of Congress or the Territorial legislature, issued a proclamation and invited the electors of the State to elect delegates to assemble in Bois  City, the capital of the Territory, for the purpose of forming a constitution to be submitted to the people for ratification or rejection. The proclamation for this convention was issued on the 11th day of May, 1889. The election was held at the time fixed in the proclamation, and the convention assembled at Bois  City, the capital of the Territory, on the 4th day of July, and proceeded to formulate a constitution. The convention adjourned on the 6th day of August, and the election on the ratification of the constitution was held on the 5th day of November thereafter.

The whole number of votes cast at this election was 14,184, of which 12,398 votes were cast in favor of the constitution. The whole number of votes cast at the election of Delegate in Congress in 1888, was 16,013.

While it may be assumed that a large vote was cast at the election in November, 1889, when the constitution was submitted to the people, yet it is not unreasonable to presume that, in view of the fact that illegal voting could not be punished, there were many persons voted who were under age, or who were not entitled to vote. We make no charge, however, of this kind, as no evidence has been submitted on the subject. There were many persons in the Territory who did not regard the statehood movement as having any warrant in law, and who supposed that the formation of a constitution, in the manner being followed, would amount to nothing.

It is not, therefore, subjecting the people of Idaho to any hardship to require that a constitutional convention should be held, composed of delegates elected in pursuance of law, and that the constitution to be adopted for the future State should be submitted to the people for ratification or rejection at an election held under the sanction of law. The provisions of the constitution to which the undersigned have called attention are of the gravest character, and should not be adopted until after mature deliberation, if at all. And in order that due notice shall be given and that careful deliberation shall be given to all the questions that may arise in the formation of the fundamental law of

the future State, the undersigned recommend the following amendment to the bill:

Strike out sections 1 and 2 and in lieu thereof insert the following sections, and change the numbers of the other sections accordingly.

SECTION 1. That the inhabitants of all that part of the area of the United States now constituting the Territory of Idaho, as at present described, may become the State of Idaho, as hereinafter provided.

SEC. 2. That all persons who shall have resided within the limits of said proposed State for sixty days, and are otherwise qualified by the laws of said Territory to vote for representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form a convention in said Territory; and the qualifications for delegates to such convention shall be such as, by the laws of said Territory, persons are required to possess to be eligible to the legislative assembly thereof; and the aforesaid delegates to form said convention shall be apportioned among the several counties within the limits of the proposed State, in proportion to the aggregate number of votes in each of said counties for Delegate in Congress, at the election held in said Territory on the Tuesday next after the first Monday in November, eighteen hundred and eighty-eight. One delegate shall be allowed for every three hundred votes cast in each county, and one delegate for any fraction of one hundred and fifty votes cast in each county. That said apportionment shall be made by the governor, the chief-justice, and the United States Attorney of said Territory; and the governor of said Territory shall, by proclamation, order an election of the delegates aforesaid in said Territory to be held on the Tuesday after the first Monday in June, eighteen hundred and ninety, which proclamation shall be issued within thirty days after the passage of this act; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said Territory regulating elections therein for Delegate to Congress. All persons resident in said proposed State, who are qualified voters of said Territory, as herein provided, shall be entitled to vote upon the election of delegates, and upon the ratification or rejection of the constitution, under such rules and regulations as said convention may prescribe, not in conflict with this act: *Provided*, That no person otherwise qualified, shall be denied the right to vote at said election because of alleged crime for which the punishment embraces disfranchisement as a part of the penalty therefor, except where he has been duly convicted thereof by a court of competent jurisdiction.

SEC. 3 That the delegates to the convention thus elected shall meet at the seat of government of said Territory on the fourth day of July, eighteen hundred and ninety, and after organization, shall declare, on behalf of the people of said proposed State, that they adopt the Constitution of the United States; whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State:

First, that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship;

Second, that the people inhabiting the said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing herein or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such act of Congress may prescribe;



Third, that the debts and liabilities of said Territory shall be assumed and paid by the said State; and

Fourth, that provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control.

SEC. 4. That in case a constitution and State government shall be formed in compliance with the provisions of this act, the convention forming the same shall provide by ordinance for submitting said constitution to the people of said State for their ratification or rejection, at an election to be held in said Territory on the Tuesday after the first Monday of October, eighteen hundred and ninety, at which election the qualified voters of said proposed State shall vote directly for or against the proposed constitution, and for or against any provisions separately submitted. The returns of said election shall be made to the secretary of said Territory, who, with the governor and chief-justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast on that question shall be for the constitution, the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitution and government of said proposed State are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of said election, and thereupon the proposed State of Idaho shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation.

It will be seen that these proposed amendments will provide for an election for delegates to the constitutional convention, for the holding of such convention, and for the submission of the constitution when framed to a vote of the people; and also the admission of the State into the Union under proclamation of the President as in the case of the two Dakotas, Montana, and Washington.

No unreasonable delay will be caused by this course. The constitutional convention will assemble on the 4th of July next, and the constitution will be submitted to the people at an election to be held on the first Tuesday in October. This will give ample opportunity for careful consideration of all the subjects which may be presented and enable the State, if the new constitution is adopted, to be represented by Senators and a Representative in the next session of the present Congress. The object of recommending this course is not for delay but in order that most careful consideration may be given both in the election of delegates and also in the voting upon the constitution and any articles that may be separately submitted in reference to suffrage shall be given the fullest and freest discussion.

If the foregoing amendment should be disagreed to, the undersigned recommend the adoption of the following proviso to section 1 of the bill, namely:

*Provided*, That this constitution shall not take effect until the same shall have been submitted to a vote of the people of the Territory of Idaho. That for the purpose of such submission the governor of Idaho shall issue his proclamation calling upon the voters of said Territory to assemble at their respective places for voting, on the — day of —, anno Domini, eighteen hundred and ninety, then and there to cast their ballots for or against the adoption of such constitution; and the said governor may prescribe such form of ballot as shall be used at the said election; and the said election shall be conducted in the manner and by the officers as now provided by the laws of the said Territory; and returns thereof shall be made, and the same shall be canvassed, in the same manner as is required by the laws of the said Territory in case of an election of Delegate to the Congress; and if the majority shall vote in favor of the adoption of the said constitution, the governor shall issue his proclamation thereof: *Provided*, That no person otherwise qualified shall be denied the right to vote at said election because of alleged crime for which the punishment embraces disfranchisement as a part of the penalty therefor, except where he has been duly convicted thereof by a court of competent jurisdiction.

The undersigned also recommend the adoption of the following additional proviso to section 1 of the bill, namely:

*And provided further,* This act shall not take effect except upon the fundamental condition that within the said State of Idaho there shall be no denial of the right of suffrage, or of the right to hold office, or to serve on juries because of crime, except after conviction thereof by a court of competent jurisdiction; and upon the further condition that the legislature of said State shall, by a solemn public act, declare the assent of said State to the said condition, and shall transmit to the President of the United States an authenticated copy of said act, upon receipt whereof the President, by proclamation, shall forthwith announce the fact, whereupon said condition shall be held as a part of the organic law of the State, irrevocable without the consent of Congress; and thereupon and without any further proceeding on the part of Congress the admission of said State in the Union shall be considered as complete. Said State legislature shall be convened by the governor of Idaho within thirty days after he shall take his office, to act upon the conditions submitted herein.

All of which is respectfully submitted.

C. H. MANSUR,  
WM. M. SPRINGER,  
GEO. T. BARNES,  
J. E. WASHINGTON,  
C. B. KILGORE.